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THE MOTION PICTURE INDUSTRY STUDY

Prepared by

DANIEL BERTRAND

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F O R E W O R D

This study of the Motion Picture Industry was prepared by Mr. Daniel Bertrand, assisted by Mr. Wilmoth D. Evans, of the Industry Studies, Section, Mr. M. D. Vincent in general charge.

Acknowledgement is here made to Mr. William P. Farnsworth, Acting Division Administrator in charge of the Amusements Division of the National Recovery Administration who gave generously of his time and experience in reviewing the facts assembled and the conclutions reached.

In the organization and presentation of the material, the Unit had editorial assistance from Mr. E. E. McCleish, former Deputy Administrator in the Amusements Division. Preliminary data on labor problems in the exhibition branch of the Industry were gathered by Mr. Robert A. Gaffney who, as Deputy Administrator in the Amusements Division, participated in labor negotiations and arbitrations during the code period.

As the report indicates, there is need of further study. The present material, however, throws much light on the difficulties and problems of this Industry.

L. C. Marshall,
Director, Division of Review.

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APPENDIX

(Evidence Study No. 25)

SUMMARY OF THE MOTION PICTURE INDUSTRY STUDY

The Motion Picture Industry is here presented as an economic entity, having three divisions, each one dependent upon the other--production, distribution and finally exhibition. Each division has problems peculiar to its own activities which intermingle with the problems of each other division and give direction to the activities of the Industry as a whole. These problems affect the labor of a wide variety of technical crafts and creative pursuits--from scenario writers, directors, the popular stars of the screen and the motion picture machine operators, down to the early morning charwomen. And finally, the Motion Picture Industry, as a whole, brings to bear an unmeasurable influence upon the social and economic welfare of the general public through the educational and entertainment content of screen presentations.

In such detail as became available during Code administration, this Study considers the inter-relation and interdependence of the three industry divisions and the activities of this Industry which flow into commerce among the States. The conclusion is reached--particularly in Chapter VI--that the Motion Picture Industry and the public welfare could effectively be served by the continuation of a measure, at least, of governmental interest. Because of the present restrictions of the Anti-Trust Laws, no other arrangements seem practicable. A far wider and deeper investigation, however, than this Study presents of all the industrial and public problems inherent in the Industry is required to determine the type and extent of federal help that would be beneficial to the Industry and to the public.

The keystone of the Industry's problems and their importance to the public are described in Chapter I in these words:-

> "The Motion Picture Industry is unlike any other; the differences extend through its amazing history, its technical progress, its individual business methods; its unusual legal involvements and its profound social responsibility. The actual product--amusement and entertainment--is intangible. The visible product--the film--is seldom sold. The business operations of the Industry are largely governed by application of the United States Copyright Laws."

Although it operates under the monopoly privilege of copyright, the Industry is restrained from full exercise of its monopoly power to exact any prices whatever for the rental of its product by reason of the competition among major producers and independents on the one side and the inter-competition of affiliated and independent theatre exhibitors on the other. The fickle and changing popular demand for certain stars--the Mae Wests, Charles Laughtons, Clark Gables, Fred Astaires and Garbos--constitutes another factor of competition that serves to determine the earning power--and hence, the rental or selling price of the films offered. The competitive situation is a complex one indeed, as this Study discloses.

Chapter I considers the extent and scope of this two billion dollar Industry.

Chapter II records the search for mass entertainment from the year 1640 to the start of the Industry in the early nineties of the last century, and the expansion since then.

Chapter III discusses the history of the NRA Code period when for the first time, the three economic divisions of the Industry were brought together, and for the enforcement of the Code, a series of extraordinary courts of Industry were established--an unusual and significant experiment procedure not only in NRA but in American industrial relationships.

Chapter IV analyses the trade practices which the Industry sought to define and regulate.

Chapter V studies the unusual variety of labor problems presented in the production and exhibition divisions of the Industry, the remedies applied and the indicated successes and failures that followed.

Chapter VI emphasizes the economic entity of the Industry as it affects Interstate Commerce, and offers suggestions for possible future developments.

The conclusions of this Study are herewith presented in the following brief summary of each of the Chapters:

CHAPTER I - DESCRIPTION AND SCOPE OF THE INDUSTRY

The Motion Picture Industry is comprised of three economic divisions, Production, Distribution and Exhibition. (Page 8)

In most cases, statistical information regarding the Motion Picture Industry is scarce and of doubtful accuracy. (Page 9)

American-made films constitute approximately 85 per cent of the value of world annual production. Approximately $2,000,000,000 is vested in the Motion Picture Industry in the United States. Approximately 650 feature productions are released in the United States annually. (Page 9)

Admissions total between $700,000,000 and $1,000,000,000 annually. (Page 9) Weekly attendance at all theatres (13,500 - 14,500) in the United States is estimated between 70,000,000 and 75,000,000. (Page 10)

Eight large corporations known as the major companies dominate the Industry. (Page 11)

Production is concentrated for the most part in or near Hollywood, California and New York City. Distribution is concentrated in 31 key cities. (Page 11)

Estimates of employment within the Industry range from 185,000 to 270,000. (Page 11)

The Industry operates primarily under the copyright laws rather than the laws of purchase and sale. (Page 12)

Film is seldom sold to an exhibitor but is usually leased or rented. (Page 12) Distributors often act merely as agents for producers. (Page 12)

Trade organizations for producers, distributors and exhibitors are described. (Pages 13-14)

CHAPTER II - HISTORY AND GROWTH OF THE MOTION PICTURE INDUSTRY

The first step in the world's search for mass entertainment began with the invention of the magic lantern in 1640. The world waited then for two centuries until photography was ready to capture instants of action through the camera's lens. Finally the way was found to project images on a wall or screen. A fury of invention and promotion started with Thomas A. Edison's first peep-show contrivance. "In the short span of the last 30 years, a new art of the people is somehow created and a gigantic new industry . . . . touching in some measure the life and thinking of every man and woman . . . . emerges with its own special burden of industrial and social problems." (Pages 16-20)

The first motion picture studio was that of Edison in 1893. Because of the cumbersome cameras of the day, the first available subjects for the motion picture were dancing acts and prize fights. In 1898, the first motion picture show, projected on a screen upon the stage of a music hall, was presented in New York. Story-telling came into use with the "Great Train Robbery" of 1904. In 1907, the essential difference between the Motion Picture Industry and all other industries - that of copyrights - was established. (Pages 20-22)

Many years of patent and other litigation led to the pooling of patents in 1907; films were pooled in 1910. In 1915, the patents pool and the film pools were ordered dissolved by the courts. (Pages 22-23)

The Industry moved on to the production of its first feature picture in 1912. The "star" system began in 1914. Block booking began in 1916. A nation-wide wave of theatre construction and much court action over theatre control occupied these years as the motion picture became independent of the legitimate theatre. Hollywood was established as the centre of picture production. (Pages 23-26)

The Industry in 1925-27 was brought face to face with a critical situation caused in part by rapid expansion, but quite suddenly, it was saved from impending disaster by the introduction of sound. (Page 27) Sound caused a greater concentration of theatres under the ownership of a few large corporations. (Page 30)

The impact of the depression was staved off for two years, largely because of the public interest in sound or "talkie" pictures, but by 1931, the depression began to grip the industry. (Pages 30-31) Attendance fell off. Profits fell sharply off. The number of theatres closed increased and reached a maximum in 1933. (Page 35) Drastic economics and wage reductions followed. (Page 36-37)

CHAPTER III - HISTORY OF THE CODE PERIOD

More than 40 widely divergent proposals for codes to govern the Motion Picture Industry were received by the National Recovery Administration. (Page 38)

A public hearing was held in Washington, D. C., on September 12, 13, and 14, 1933. The Code was submitted to the President and signed on November 27, 1933. (Page 39).

The Code was vertical in scope covering all branches of the Industry. For the first time in the history of the Industry, an effective agreement between all factions had been achieved. (Page 40)

Relatively high labor standards were incorporated in the Code. American Federation of Labor wage scales were used as standards. (Page 41)

The Code set up a series of industrial courts throughout the country to assist in the enforcement of trade practice provisions. (Page 43) It is believed that no other such courts of industry were established in any other industry. To these courts, exhibitors brought problems and disputes on many subjects not covered by the Code and not subject to relief in the courts of law. This contribution to self-regulation by industry under the eye of the Government is of high importance to the student of industrial progress.

Considerable pressure was exerted during the formulation of the Code to eliminate certain selling practices known to the trade (and to a wide area of the public) as block-booking, score charges, double feature shows. These terms are fully explained and the procedure described -- pages 44 to 46. Other efforts were made to incorporate in the Code, provisions regulating poster exchanges and affirming in certain terms the exhibitor's right to buy. Such provisions were not included in the Code. (Pages 44-46).

The Industry resorted to the unusual expedient of naming the members of the Code Authority directly in the Code. (Pages 47-48).

Assent to the Code was necessary before any individual was entitled to file a complaint under the Code. The controversy that followed was carried to the courts but this action was dropped subsequent to an Administrative Order interpreting the form of assent required. (Pages 50-52).

Clearance and Zoning Boards were set up by the Code in the 31 exchange territories to formulate uniform and equitable schedules for the showing of pictures. (Pages 53-55).

Local Grievance Boards set up by the Code Authority in the 31 exchange territories heard 1,576 complaints of trade practice violations during the period of their operation. (Pages 55-57).

Several special committees were named by the Code Authority to handle particular problems: the Agency Committee; the Writer-Producer Committee; the Actor-Producer Committee; the Standing Committee on Extras; and the Studio Labor Committee. (Pages 58-61).

The Code Authority was financed by assessments against members of the Industry. The expense of administering the Code was divided between the exhibition branch of the Industry and the production and distribution branch of the Industry as a unit. (Pages 61-63).

During the period of its operation, the Code Authority received contributions amounting to $342,000. At the expiration of the Code, the Code Authority had on hand $16,000 in cash and $8,000 in undeposited checks. (Pages 63-64).

Four amendments to the Code were approved during its period of operation, none of which made any major changes. (Page 65).

Only five exemptions from provisions of the Code were granted. (Pages 65-66).

Relatively few compliance difficulties were experienced with the labor provisions of the Code. Complaints with regard to skilled labor were for the most part dealt with directly by the Amusements Division of the National Recovery Administration without going through the usual compliance channels. (Pages 66-67).

The Motion Picture Code was attacked by the National Recovery Review Board set up in 1934. National Recovery Administration officials replied and charged that the National Recovery Review Board had acted on incomplete information. (Pages 67-68).

CHAPTER IV - TRADE PRACTICES

This Chapter considers the unusual range of trade practices, many of which are peculiar to the Motion Picture Industry and involve not only production, distribution and exhibition activities, but the interests of the public as well.

The practices discussed are (1) over-buying, (2) clearance and zoning, (3) block booking and the cancellation privilege, (4) the forcing of short subjects, (5) rebates on admission prices involving schemes such as Bank Night, (6) designated play dates, (7) non-theatrical accounts and (8) others designated in the Code, including payment of unreasonable salaries and the enticement of talent in popular demand, threats to build or acquire theatres, the activity of distributors' employees in competition with exhibitors, substitution of pictures in an existing contract, prior advertising of feature pictures, form of license contract, arbitration of disputes between distributors and exhibitors, the pledge of wholesome pictures and wholesome advertising.

These subjects because of their deep roots in the whole structure of the Industry do not readily lend themselves to a summary in brief. Each major problem is discussed as to its origin, its extent before the Code, the applicable provisions of the Code and the results achieved. The public interest in these major problems is also indicated and the trend, on the basis of Code experience, for the future handling of these problems is traced. The conclusion is reached that federal assistance should be considered to control over-buying (page 76). to help regulate and solve

clearance and zoning problems (page 82), to reach a satisfactory solution of the block booking problem (page 97), and to determine rights proper to all in the forcing of short subjects (page 101) and the designation of play dates (pages 111-112).

CHAPTER V - LABOR PROBLEMS IN EXHIBITION, PRODUCTION AND DISTRIBUTION

A. EXHIBITION

The greatest volume of employment is in exhibition. Statistics are unreliable; estimates vary from 130,000 to 234,000; but the figure 185,000 is generally accepted by labor organizations. (Page 129). Skilled workers are, for the most part strongly organized; the unskilled, except in isolated instances, remain unorganized. (Page 130)

The major problem in exhibition was with the skilled workers. An advance of far reaching importance was made through the Code when employers agreed not to lockout workers and the employees agreed not to strike. As a result, the Motion Picture Industry had less major labor trouble than any other comparable industry during the Code period. (Pages 138 - 139

Practically all of the complaints with regard to skilled labor originated with motion picture machine operators. The various devices and subterfuges used to evade the provisions of the Code are discussed on pages 141 - 143. Fact-finding committees were found useful in arbitrating major disputes. Success was lacking in the New York situation (page 143 - 145), but the Pittsburgh case involving 100 theatres developed into a formula that was proposed for use in later cases. (Page 145

B. PRODUCTION

In production, involving probably 19,000 regular workers and from 8,000 to 10,000 listed as extra players, certain problems attracted national attention. One of these was the study of alleged excessive salaries at Hollywood. An investigation was conducted at the instigation of President Roosevelt. Division Administrator Sol. A. Rosenblatt concluded that the suspended Code provision directed against excessive salaries should remain suspended "because it is not possible of effective administration." (Pages 148-150)

Of importance was the problem of the extra player. The Code provid a minimum wage and protective working conditions and sought to put down nepotism and favoritism. (Pages 154-155 The Standing Committee on Extras was appointed in January 1934 to deal with extra player problems. Registration of extra players was attempted, but no final procedure had been approved at the time the Code became inoperative. (Page 156).

The Studio Labor Committee met few enforcement difficulties and adjusted satisfactorily 98 per cent of the cases considered. (Page 156)

C. DISTRIBUTION

From 8,000 to 9,342 are employed in Distribution. Labor is a minor problem in this division of the Industry. (Page 158).

CHAPTER VI - THE INTERSTATE CHARACTER OF THE INDUSTRY

"Throughout this report, it has been shown that, acting individually, the various branches of the Industry have been unable to eliminate many causes of friction and are prevented from acting in concert by the Sherman and the Clayton anti-trust acts. The question immediately proposed is whether some beneficial steps might be taken under the Federal government if the practices in question are interstate in character." (Page 159)

The production and distribution divisions must be considered together rather than separately. These divisions are interstate in character. In a number of cases the Courts have so held. (Page 159).

Exhibition, taking place in a limited area, is a different problem. The exhibitor seldom purchases the film he exhibits. He is merely granted the right to exhibit films as the films pass through the state or city in which his theatre is located; these films must be returned to the distributor, or be shipped to another theatre. This current of commerce takes place principally through the 31 key exchange cities. A delay in exhibition at a key house may be reflected in delays in theatres in other states. (Page 160). The chain operation of theatres in another pertinent consideration. (Page 160)

The inseparability of the divisions of the Industry would seem to justify a conclusion that the Courts would apply the commerce clause of the Constitution to this Industry as a unit. The Swift case, the Stafford case, the Standard Oil case, the "hot oil" case, are cited. (Pages 161-164)

Next is a consideration of problems in the solution of which federal assistance might prove beneficial. Block booking which was for eleven years under consideration by the Federal Trade Commission is cited as an instance. (Page 164). There is also the question of over-buying; a Federal statute might be incapable of administration but the situation would seem to call for the use of agencies under Federal supervision. (Pages 165-166) The question whether monopoly exists and if so to what extent should be cleared up through study by a Federal agency. (Pages 166-167)

Clearance and zoning involve questions of interstate character. Formulation of uniform schedules are estopped by the anti-trust laws. Federal assistance here might safeguard the rights of minorities and the public. (Page 167)

Because of the difficulties of using the Courts, it would seem that only a Federal Commission would be flexible enough to cope with these various situations. (Pages 168-169) The need for further study of all the problems involved is indicated. (Page 169)

CHAPTER I

DESCRIPTION AND SCOPE OF THE MOTION PICTURE INDUSTRY

A. DESCRIPTION OF THE INDUSTRY

The Motion Picture Industry is unlike any other; the differences extend through its amazing history, its technical progress, its individual business methods, its unasual legal involvments, and its profound social responsibility. The actual product - amusement and entertainment - is intangible. The visible product - the film - is seldom sold. The business operations of the Industry are determined by applications of the United States copyright laws.

The sudden and dramatic growth of the Motion Picture Industry has kept its history vivid with excitement. Its drama proceeds as directly from inventions that demand revolutionary changes over-night as from the intermittent outbreaks of competitive warfare to the accompaniment of advertising campaigns that have a colorful propensity for hysteria and exaggeration. Its units rush to each other's aid when the danger of public discipline threatens and, as instantly, fly apart when the drumfire of criticism dies down. No single trade association truly representative of the industry as a whole has ever existed; the economic divisions of the industry found no way to reach common understanding and co-operation until producer, distributor, and exhibitor were brought together for the first time under the Code of Fair Competition.

The Motion Picture Industry embraces all activities in connection with the commercial production, distribution, and exhibition of motion pictures for the entertainment of the public. The three economic divisions of the Industry derive their existence as well as their sharply defined characteristics from an essential inter-relation and inherent dependence upon one another.

The production division covers all processes and activities involved in the making of motion pictures. It includes the selection of film material, the preparation and photography of scenes, and, to a certain extent, the development of exposed film and the preparation of positive prints for exhibition.

The distribution division involves the maintenance of a sales staff, the renting of film to exhibitors, the physical distribution and servicing of film, the collection of due accounts, and the sale and the lease of advertising material.

The exhibition division involves the commercial showing of pictures in theatres, with or without an accompanying stage presentation or vaudeville program.

The responsibilities and obligations of the Motion Picture Industry are greater perhaps than those of any other industry because of its power for good or evil in the cultural and sociological development of our people.

This profound and far-reaching influence upon the moral, social, and economic standards of the world invests the Motion Picture Industry with an importance without parallel.

B. SCOPE OF THE INDUSTRY

Statistical information regarding the Motion Picture Industry is scarce and, in the main, unreliable. The major proportion of such figures as are available seem to be estimates by individuals rather than results of accurate surveys. An evaluation of all obtainable statistics on the Motion Picture Industry was made in the Research and Planning Division of the National Recovery Administration; is identified as "Evidence Study - Motion Picture Industry" and is included as an appendix to this study. A census of amusements is to be made, beginning January 2, 1936, by the Bureau of Census, Department of Commerce. This study is expected to develop data concerning the number of theatres, seating capacity, division of theatres into type, gross and net income, and the like. Until a truly accurate statistical picture has been secured, the following must serve to define the approximate position of the Industry.

1. American Films in the World Market.

Sixty-five per cent of the annual world production of film as measured by footage or "screen time" is American made. This constitutes 85 per cent of the value of world annual production (*).

2. Capital Investment.

It is estimated in the Motion Picture Almanac for 1935 that approximately $2,000,000,000 is invested in the Motion Picture Industry in the United States. Approximately $100,000,000 is invested in production; considerably less than this amount in distribution; and the balance in exhibition. The bulk of the investment in exhibition is theatres and in real estate.

3. Annual Production.

Six hundred and sixty-two (662) feature productions were released in the United States in 1934. This is about average. Approximately half of these (361) were released by the major companies. Approximately one fifth of the total (119) were independent productions; the remainder (182) were foreign importations.

In addition to these feature productions, approximately 1,000 comedies, cartoons, and other so-called "shorts" and about 500 installments of newsreels were produced.

4. Volume of Business.

The Motion Picture Almanac for 1935 estimates that admissions in 1934 totalled between $700,000,000 and $1,000,000,000. This Almanac in the 1933 edition listed figures showing the average distribution of the consumer's dollar spent on motion pictures. This survey showed that approximately 18.2 per cent of the consumer's dollar went to production of motion

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(*) Motion Picture Almanac - 1935.

pictures; 7.8 per cent to distribution and 74 per cent to exhibition.

Using $700,000,000 as the more nearly correct figure for total admissions and combining it with the percentages above, it is estimated that in 1934 approximately $127,000,000 was spent on the production of motion pictures; $55,000,000 went into distribution costs, and $518,000,000 went to costs other than film rentals in the exhibition branch of the Industry. Thus the approximate volume of business is estimated as follows: for producers, $127,000,000; for distributors, $182,000,000 (distribution cost of $55,000,000 plus producers' estimated $127,000,000); and for exhibitors, the grand total again of $700,000,000. The Department of Commerce Census of Manufactures estimated the costs of production at $119,000,000 in 1933. The general opinion as reported in trade papers seems to be that the volume of business done this year (1935) had improved materially over last year (1934), although exact figures to support this contention are lacking.

5. Weekly Attendance.

The Motion Picture Almanac for 1935 estimates weekly attendance in all theatres in the United States at 75,000,000. The Film Daily Year Book for 1935 estimates this attendance at 70,000,000.

6. Number of Concerns.

An estimate of the number of producers in the Industry depends largely upon the criteria used to define a producer. Eight large producers collectively account for approximately 80 per cent of the capital invested in the production division of the Industry. Thirty-three (33) of the minor producers are of sufficient importance to have the names of their corporate officers listed in the Motion Picture Almanac for 1935. There are many smaller producers, - from 100 to 200 of them - who release pcitures occasionally.

Eighty-six (86) distributors are of sufficient importance to have the names of their corporate officials listed in the Film Daily Year Book for 1935. These distributors operate approximately 550 film exchanges in the United States; about 450 of these exchanges are affiliated with producers.

The Film Daily Year Book for 1935 lists 13,386 theatres open and operating as of January 1, 1935. The Motion Picture Almanac for 1935 lists 14,552 theatres as operating, as of the same date. The counts of both publications are declared to have been taken from distributors' listings of accounts serviced. The discrepancy is probably caused by a difference in definition as to what constitutes an operating theatre.

The Almanac declares that the total number of theatres in the United States, both closed and operating, is 18,262. Of these, 2,075 are stated to be affiliated circuit houses, 3070, unaffiliated circuit theaters, and 13,120, independent theatres. Closed theatres are listed as 3,711 in number. There is no indication into which class the closed theatres fall; a majority are probably independent theatres.

Using data from this same 1935 Motion Picture Almanac it would appear that although affiliated and independent circuit theatres represent only

28 per cent of all theatres in number, they control approximately 48 per cent of the total seating capacity. Calculations from this data indicate that the average seating capacities of the various types of theatres are as follows: for affiliated theatres, 1,300; for unaffiliated circuit theatres, 850; independent houses, 450.

7. Concentration of Control.

Eight large corporations known as the "major companies" dominate the Industry (*). According to officials of the Motion Picture Producers and Distributors of America, Inc., the output of these major companies constitutes 80 per cent of the value of total film production. Eight of the eleven national distributing corporations are affiliated with major companies. Approximately 25 per cent of the most desirable seating capacity in the country is controlled by major companies. This concentration of control provides a clear economic division of the Industry between major and independent interests. The consequences of this vertical and horizontal development are reflected in practically all the problems of the Industry.

8. Geographical Concentration.

Approximately 70 per cent of the total production of film in the United States comes from studios in or near Hollywood, California (**) A large proportion of the remaining 30 per cent of American production comes from studios in or near New York City.

Approximately 99 per cent of all distribution is concentrated in 32 "key" cities. Each of these cities serves the surrounding territory. In the order named: New York, Philadelphia, Chicago, Boston, Los Angeles, Detroit and Pittsburgh are the most important film distribution centers.

The number of theatres and their seating capacity necessarily depend on potential attendance or population. Although small theatres may be found everywhere, the larger and finer houses are concentrated in the largest centers of population.

9. Employment.

The Motion Picture Almanac for 1935 estimates that approximately 270,000 persons were employed by the motion picture industry in 1934, divided as follows: 28,000 in production; 8,000 in distribution; and 234,000 in exhibition. These estimates, particularly the latter, are probably high. For instance, labor organizations in the industry estimate the exhibition employment at a maximum of 185,000.

(*) These major companies are: Warner Bros. Pictures Corporation, Paramount Pictures Corporation, Loew's, Inc., Fox Film Corporation, United Artists Corporation, RKO Pictures Corporation, Universal Pictures Corporation, Columbia Pictures Corporation.

(**) Department of Commerce, Census of Manufactures, 1933.

In addition to the above there is an average of approximately 250,000 placements per year, according to the Almanac's statistics, for "extra" players in production. The number of persons employed as extras is variously estimated from 8,000 to 14,000. The average number of placements per person, which may mean one day's work or several, is necessarily quite low.

C. OPERATION UNDER COPYRIGHT LAWS

There is a highly important difference between the Motion Picture Industry and other industries which were brought under NRA codes. This Industry operates principally under the copyright laws as opposed to the laws of purchase and sale. The ostensible product of the Industry - positive prints of motion picture film - is seldom sold. The film is generally leased or rented; the title remains with the lessor. The actual product of the Industry is intangible, and consists of amusement, education, entertainment, or information conveyed by means of film. Each film is used many times, crossing and re-crossing state lines as it is leased and shipped to one exhibitor after another.

Operation under copyright laws creates many situations found only in this Industry.

1. The Distributor-Exhibitor Relationship.

So long as the title to copyrighted material remains with the holder of the copyright, that owner may impose such conditions as to the use or sale of the material as he desires.

In practically no case does a distributor sell film to an exhibitor. The exhibitor secures a license from a distributor to exhibit a picture. This creates a contractual relationship, making legal an act which otherwise would be illegal. Having secured the license, the exhibitor then rents the film from the distributor in order to exercise his exhibition rights. These two transactions are usually effected in one instrument known throughout the industry as a "license and rental agreement."

Since he retains title, the distributor has practically a free hand in imposing conditions as to the use of his property. He may permit exhibition only upon such designated days or dates as he may specify. He may require that the film licenses shall not be used on a program with any other feature, or he may require that a minimum admission price be observed. Perhaps in no other industry has the distributor (wholesaler) comparable rights.

2. The Producer-Distributor Relationship.

Three general types of relations exist between the producer and the distributor:

1. The copyright to a film is held by a producer. In this case, exhibition contracts are drawn up in the producer's name, the distributor acting merely as an agent.

2. A producer, usually a small independent, may sell a copyrighted film and, necessarily, all rights of reproduction incident thereto, to a national distributor. In this case exhibition contracts are drawn in the distributor's name.

3. The distributor may be the original owner of the film rights of the subject material and may employ a producer to make the film; but in this instance the copyright and title are always in the distributor's name. In this case, as in the preceding case, exhibition contracts are made in the distributor's name.

D. IMPORTANT ORGANIZATIONS WITHIN THE INDUSTRY

1. Motion Picture Producers and Distributors of America, Inc.

In the early days of the industry several attempts had been made to organize the producer-distributor interests; each had failed. In 1921, public furor was aroused by certain sensational Hollywood scandals, and indignation over the tawdry sensationalism and immorality of current screen productions stirred censorship groups into unusual activity. Box office receipts dropped off. The movement for government control of films was spot-lighted by bills intended for state and federal legislation.

The Industry felt that it had to choose between self-regulation or federal censorship - and choose quickly. The movie magnates sought a leader under whom they could unite. Executive ability was necessary; strong political connections would be no handicap. Furthermore, the man chosen must have no connection with any part of the Industry. Will H. Hays, a former United States Postmaster-General, agreed to act. He became president early in 1922 of the newly formed Motion Picture Producers and Distributors of America, Inc., and still serves. This group is known generally as the "Hays Organization".

In 1928, the 28 interests represented in this Hays Organization controlled about 60 per cent of all motion pictures produced in this country (*). Film Boards of Trade operating in each of the 32 exchange territories acted as a field organization. Regional distributors affiliated with these Film Boards of Trade controlled about 98 per cent of all film distribution (**).

The Hays Organization represents the industry in opposing or circumventing the ever-recurring attempts to secure censorship legislation. As a counter offensive, the producers determined to set their own house in order, and as an essential step formulated a moral "code" and thus set up a censorship organization of their own. Pictures are reviewed by this board and released to the public with a stamp of approval if found not to be inconsistent with the "code". In addition, a standard set of advertising ethics was prepared to which all member groups subscribed. This pledge of ethical standards in the quality and character

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(*) (**) "The Motion Picture Industry" by Howard T. Lewis of Harvard University. Page 264. Publisher, van Nostrand, 1933.

of pictures was re-affirmed in the Motion Picture Code. Unusually energetic support of the pledge and other defensive self-regulation were called forth in 1934 to answer a public challenge organized under the name, The League of Decency. The Industry is credited with having, during recent years, improved the standards of its pictures in clean direction and wholesome story.

The Hays Organization also represents major producers and distributors and affiliated exhibitors in opposing other types of legislation deemed by them to be inimical to their interests. It also serves as a co-ordinating agency in the field of public relationships.

At one time, the organization through the subsidiary Film Boards of Trade attempted to formulate standard schedules of clearance and zoning by agreement with independent exhibitor groups in each territory; but the effort was halted by the Federal Courts.

In 1933, approximately fifteen (15) corporations, including all major producing and distributing companies, the Eastman Kodak Co., and Electrical Research Products, Inc., were members of the Hays Organization (*).

2. The Motion Picture Theatre Owners of America - (known as (MPTOA).

The Motion Picture Theatre Owners of America was organized by independent theatre owners in 1920 to combat the theatre expansion policy then pursued by the Famous Players-Lasky Corporation. Several state and regional groups operating as independent associations composed a national association which attempted to coordinate activities and provide uniform action on problems of major importance to independent exhibitors.

In 1927, because of the expressed belief that more constructive accomplishments could be secured through cooperation than through open hostility, the association offered membership privileges to producer-distributor theatre owners. The membership of MPTOA includes many of the more powerful, first run, circuit and affiliated theatres.

3. Allied States Association of Motion Picture Exhibitors.

The association known as the Allied States Association of Motion Picture Exhibitors was originally formed in 1923 as a protest against some of the activities of the aforementioned MPTOA. Its organization was similar in many ways and regional groups in many instances transferred their allegiance from one organization to the other (**). In 1926, following advances made by the MPTOA to serve the interests of independent exhibitors primarily, Allied disbanded.

(*) Transcript of Hearings on Proposed Code of Fair Competition for the Motion Picture Industry - Volume 1, page 7. September 12, 1933.

(**) "The Motion Picture Industry" by Howard T. Lewis of Harvard University. Page 300. Publisher, van Nostrand, 1933.

In August 1928, certain prominent independent exhibitors who had been members of the original Allied States group decided to revive and re-organize the former association. That was done. Allied States became active once again; it led the opposition to the Motion Picture Code. The membership is open to affiliated theatres, but primarily Allied States is made up of small, subsequent-run, independent theatre owners. The actual number of theatres represented by Allied States and by MPTOA continues to be the subject of considerable speculation. Each association claims approximately 4,000 theatres.

4. The Theatre Owners Chamber of Commerce of New York.

This is a powerful organization in New York City, but its membership is limited to that vicinity. Its principal membership is circuit theatres, both independent and affiliated.

5. The Academy of Motion Picture Arts and Sciences.

The Academy of Motion Picture Arts and Sciences is an association of various groups interested in the production division of the Industry. It includes six branches, namely, producers, actors, directors, assistant directors, writers, and technicians. The Academy provides methods of adjustment and conciliation of disputes between producers, as well as between the producers and the special groups of employees just mentioned.

Acting as a clearing house for technical data relating to production, the Academy conducts educational campaigns within the Industry as part of its effort to bring about industry-wide standardization in technical processes. The Academy is not concerned with the daily press nor the public; its work is more directly focused upon contacts with survey experts, special organizations and manufacturing and research concerns.

The Code proposals submitted by the Producers' committee included provisions delegating the administrative functions in the production branch of the industry to the Academy. Frank Gillmore, president of the Actors' Equity Association raised the objection that the Academy was comparable to a "company union" (*), while other groups connected with the production branch of the Industry contended that proper representation could not be secured from a body dominated by major producers.

6. The Labor Groups.

There are several labor organizations. Discussion of their activities appears in the Chapter on Labor, later in this report.

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(*) Transcript of Hearings on Proposed Code of Fair Competition for the Motion Picture Industry - Volume 1, page 146. September 12, 1933.

CHAPTER II

THE HISTORY AND GROWTH OF THE MOTION PICTURE INDUSTRY

A. TWO CENTURIES OF DEVELOPMENT

The history of the motion picture is as fantastic as the curious names which its battalions of inventors have over the years given to the devices that by adding new marvels upon old marvels have brought about the seeming perfection of today's product.

The scientist and the humbug; the earnest inventor and the exploiting pirate of his ideas; the honest business man and the charletan; the man of the theatre, the financier and the lawyer-cross and recross one another's paths in endless entanglements; yet despite this confusion, in the short span of the last 30 years, a new art of the people is somehow created; and a gigantic new industry dealing in millions upon millions of dollars and touching in some measure the life and thinking of every man and woman throughout the nation, emerges with its own special burden of industrial and social problems.

The motion, or moving, picture as such traces its origin back to the Magic Lantern. In the hour that the "magic" of the magic lantern became wedded to the art of photography, the moving picture found assurance of its future usefulness and influence.

1. THE FIRST STEP - THE MAGIC LANTERN

A company of nobles sat in a room in the Jesuit College in Rome one night in the year 1640 and saw, with amazement and delight, grotesque and giant shadows cast upon the wall depicting Death, Evil and the Devil. The ingenious inventor was the Jesuit, Athanasius Kircher. He called his contrivance the "Magia Catoptrica" - the magic lantern. His scenes were painted on slides of glass and were projected on the wall by means of a lamp, a reflector and a lens. In 1646, Father Kircher illustrated, in a book he published under the title: "The Great Art of Light and Shade", a means of changing from picture to picture by the use of a revolving drum.

The elements of today's motion picture were present in that room in Rome in 1640; but more than two centuries were needed to achieve their possibilities. The motion picture had to wait upon - first, the development and perfection of photography; next, the invention of the photographic film and finally, the perfection of devices to combine all elements into the reproduction of sound and action. And decades of research into the principles of vision had to precede these achievements.

The same Mark Paul Roget who gave the world the matchless wordbook he called the Thesaurus, discovered one of the most important of the mysteries the day he saw the wheels of a baker's cart through the slats of a venetian blind. Despite the cart's rapid motion, he saw the wheels momentarily at rest in each slit of his blinds - but in a different phase of motion. Roget had come upon the principle of the motion picture camera - the eye's ability to carry action over from one successive

picture to the next and thus create the full illusion of uninterrupted action.

2. THE SECOND STEP - ILLUSIONS OF VISION

From Roget, history carried this problem of the illusions of vision to Sir John Herschel, Michael Faraday, Antoine Plateau, von Stampfer and others. As a curiosity of research and invention, Plateau in Ghent and von Stampfer in Vienna, independently of each other, made the "first devices in the world for seeing pictures in simulated motion." (*) Both placed drawings on the rim of a disc, viewing the drawings of successive moments or instants of action through another disc as both discs revolved upon the same axis.

That was in 1832. In 1853, an Austrian Lieutenant of artillery took the same device, incorporated it in the Kircher Magic Lantern of 1640 and projected the images on the wall. There could be, and was, no further progress until photography was ready. Daguerre with his immortal tintypes is the most important personality in achieving this next step.

3. THE WORD CINEMA APPEARS

The wet plate process of photography succeeded Daguerre's sensitized metal plates. Experiments with wet plates by Coleman Sellers, head of a mechanical engineering business in Philadelphia, led in 1861 to the invention of a machine and because of it a word that today means "moving picture" throughout the world.

Sellers posed his small sons, - Coleman, Jr., pounding a nail with a hammer and Horace near him in a rocking chair. He mounted the prints of this series of photographs on a wheel or drum which was turned by hand as one looked through a stereoscope. This machine of his, Sellers called the "Kinematoscope." Kinema (Cinema) was a new and delightful word; it went around the world waiting for its perfected product to arrive.

Two years later in the same city of Philadelphia, Henry R. Heyl invented a machine he called the "Phasmatrope". Terry Ramsaye in his book "A Million and One Nights," says that the Heyl machine, after the posing and development of pictures at successive stages of action according to Sellers plan, "carried thin glass positive pictures mounted radially on a wheel which exposed them intermittently to the light ray of a magic lantern. This machine has a shutter and a ratchet and panel intermittent mechanism which produced all the machanical effects necessary to the proper projection of pictures, even by today's standards."

Heyl's first public showing of this wonder was held February 5, 1867 for the benefit of the library fund of St. Mark's Evangelical Lutheran Church; 1,600 persons attended and the receipts were $850.

4. THE THIRD STEP - ACTION PHOTOGRAPHY

The next step brings swiftly into play the first touches of the modern tempo - the first multi-millionaires, a $25,000 wager and a race

(*) "A Million and One Nights" by Terry Ramsaye, Volume 1, Page 12, Publisher, Simon and Schuster, 1926.

horse. And for those who trace the course of empire westward - the first contact of the moving picture with California.

Leland Stanford, the immensely wealthy governor of California, in 1877 bet James R. Keene, another Pacific Coast tycoon, $25,000 that a race horse when in full speed took all four feet off the ground at once. Stanford was a breeder of fast horses. He didn't agree with the art and sculpture of the centuries. He had to resort to photography to prove his contention and win his wager.

That is how the curious personality of Eadweard Muybridge entered motion picture history. Muybridge was a San Francisco photographer who had been sent to Alaska to take photographs to answer the criticisms that arose over Seward's purchase of that territory. When Stanford sent for Muybridge to prove his wager, the wet plate camera then in use had no speed faster than one-twelfth of a second; but Muybridge snapped away at Stanford's racing horses. One camera wouldn't do. Stanford ordered a row of cameras to be set up with a line of strings from each shutter stretched across the track. The horses in their stride were to break the string. That didn't work. An engineer was needed to devise a shutter arrangement to operate the cameras. John D. Isaacs, who later became chief engineer of the Southern Pacific Railway, was chosen by Governor Stanford for two reasons; he was an up and coming engineer and a first class amateur photographer.

After trying many expedients, Isaacs hit upon a device resembling the cylinder of a Swiss music box; its "pins one after another closed electric contacts controlling the cameras for successive exposures." (*) Stanford was excited over the results and set up 24 cameras in a row. With this shutter-opening device furnished by Isaacs, Muybridge continued photographing race horses until 1881.

The Governor was delighted beyond measure with his enormous collections of photographs; took them and Muybridge to Paris; created a nine-day's wonder there and inspired the famed artist Meissionier to see if the disjointed parts - separate pictures of a horse's gait--could be swung back into the rhythm of motion. Meissionier mounted transparencies of the Muybridge pictures on a revolving disc, put the disc into a projector - and the thing was done! The French had a further important clue to the ultimate motion picture; Muybridge had praise and remained a photographer.

One record more and the "pre-historic" days of the moving picture are over.

A Frenchman, Louis Aime Augustin Le Prince "reached a conception", says Ramsaye in his "A Million and One Nights," of a pair or parallel strips of "sensitized paper or equivalently flexible material which were to travel alternately step by step past two lenses, one above the other. ....Le Prince, while living temporarily in New York, took out an

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(*) "A Million and One Nights" by Terry Ramsaye, Volume 1, page 36. Publishers, Simon and Schuster, 1926.

American patent, No. 376,247, issued in 1886. He returned to Great Britain where another patent was issued January 10, 1887,. . . ." Le Prince did not accomplish what patent authorities call "a reduction to practice."

Ten years after Le Prince mysteriously vanished, a machine purporting to be his was shown in a New York court in a suit attacking the priorities of a Thomas A. Edison patent; the Le Prince claims were not vindicated.

5. THE FOURTH STEP - THOMAS A. EDISON

At Menlo Park, New Jersey, Edison was at work in 1886 improving and perfecting his phonograph. He sought now to add pictures to sound-pictures to be made in instants of action on a cylinder. This was the plaything of the electrical wizard, his relaxation while working at that time on his major problem - the magnetic separation of ores. As confidential technical assistant, Edison engaged a young Englishman - William Kennedy Laurie Dickson - who came to play a leading part in the creation of the world's first moving pictures.

In 1887, Edison put Dickson to work to combine pictures with the voice reproduction of the Edison phonograph; soon master and man saw that the cylinder motion picture machine had little probability of success. The idea was abandoned. Dickson began working with celluloid plates. Celluloid was a failure.

Then in 1889, George Eastman of Kodak fame making use of the Goodwin patents, announced a method of making a roll of film that could be photographically sensitized. Eastman's first order came from Dickson from the Edison laboratories. The film couldn't be made longer than 50 feet; no greater length could be handled in the best available camera.

6. THE FIFTH STEP - A ROLL OF FILM

From the Eastman film and the Edison-Dickson plans came the Kinetoscope which used a 50 foot length of films wound in an endless loop over a series of spools. The film ran between an electric light and a rapidly revolving shutter which exposed the film to the viewing lens into which the spectator peered. A camera was invented to take the films for the Kinetoscope. That was called the Kinetograph.

The Kinetoscope was a peep show machine for the amusement of the public. Apparently that was all the interest Edison had in it. Dickson insists in his records and pamphlets that he had projected the films upon a screen eight by ten feet; after some apparent denials, Edison does recall an experiment with a five foot screen. Edison apparently had no desire at that time to complete a projecting camera which would have hastened the advent of the motion picture theatre many years.

On August 24, 1891, Edison made application for a United States patent on his Kinetoscope. It was then suggested that he should also apply for foreign patents particularly for England and France.

"How much will it cost?" Edison asked casually.
"Oh, about $150," he was told.
Edison waved the suggestion aside. "It isn't worth it." (*)

Business men and shrewd exploiters were keen to get hold of the Kinetoscope and open peep parlors; they could hear the restless money in the pockets of millions of future customers. But Edison let the entire opportunity of the Chicago World's Fair in 1893 pass by; neither machines nor film were available. The fumbling devices that had preceded the Kinetoscope were at the Fair, but not the Edison-Dickson marvel with its traveling film.

7. THE FIRST STUDIO; THE FIRST ACTORS

But during these days of 1893, the first motion picture studio had been designed and built and the first actors and actresses of the film world had appeared before the camera. The studio was made to provide scenes for the peep show Kinetoscope. This studio was an ugly black tar paper affair in the Edison plant in New Jersey and was forbiddingly called the Balck Maria.

Photography in 1893 was a violence of contrasts; Black Maria provided the contrasts. Its stage was swung like a turntable so that the sun, whatever the hour, could shine full on the actor against the stygian darkness of the shadow-box background.

Scenes had to be violent and active. Dickson was cameraman, director and laboratory staff. The Black Maria productions for 1893-1894 (on the authority of Ramsaye) were trained bears; monkey acts; trick dogs; a solo dancer from Broadway; Annie Oakley and Buffalo Bill; and an Indian dance; a comic barbershop scene; two cock fights; Sandow, the strong man; a female contortionist; a tooth extraction in which (by way of educational content) Dr. Colton, first to administer gas, demonstrated his improved method-and then daringly - 50 feet of action from a popular Broadway show.

Finally the first ten machines reached New York at No. 1155 Broadway on April 14, 1894. By June, the Kinetoscope had reached San Francisco. The public was ready with its nickles in endless waiting lines; so was the investor with his larger sums. The nickelodeon became an American Institution.

Motion pictures started life looking for a "punch" and made "punch" a permanent habit. Pictures found their punch in the prize ring - an ideal space of action within the range of that day's cumbersome cameras. Thus it happened, through crowd interest and the technical restrictions of the first cameras that pugilism provided the earliest picture interest. The first motion picture "star" was James J. Corbett, - Gentlemen Jim himself of the prize ring. Others followed - Jackson, Fitzsimmons, McAuliffe, Griffo, and Dixon.

(*) "A Million and One Nights" by Terry Ramsaye, Volume 1, page 76. Publisher, Simon and Schuster, 1926.

Importuned time and again by the Lathams and others to develop a projecting camera to throw his images on wall or screen, Edison as persistently refused. The Lathams, picturesque father and two debonair sons, went ahead with their own plans. On Sunday April 21, 1895 motion pictures were projected life-size on a screen for the first recorded time in history. The Lathams were the heroes of a brief hour of fame.

In that hour, a bitter controversy started. Thirteen ceaseless years of patent litigation clamored and raged through the courts. Piracies and appropriations of Edison's patents appeared in the United States, in France and in England. Millions of dollars poured into the promotions that followed and other fortunes were spent in the legal warfare of conflicting interests. Some of the questions raised in those days still linger on the scene unanswered.

8. THE FIRST REGULAR "SCREEN" PERFORMANCE

It would appear from patent records and agreements with Edison that Thomas Armat of Washington, D. C. had established the basic principles of film projection with his invention of the Vitascope and thus started the commercial history of the motion picture in the United States. The Armat invention - Patent No. 586,953, issued July 20, 1897 - was shown first in 1895.

Under a special contract, the Vitascope, as perfected by Armat, was manufactured and marketed by Edison. Explaining his part in the development of projection, Edison in May 1922, wrote to Armat this acknowledgment: "I saw you had a better one (projection machine) than mine --- dropped my experiments and built yours which was the first practical projection machine". (*) It was this machine which thrilled the show world in 1896 at at Koster and Biall's old Music Hall in Herald Square, New York. The pictures were thrown on a 20 foot screen set in an enormous gilded frame.

Now followed a mad scramble throughout the land for state's rights for the new type of entertainment. Stores became theatres of a sort overnight; the customers wedged in to see the jerky flashes of something in action on the crude screens; mechanical pianos kept up their clatter as of pebbles dropping in rhythm on a tin roof. Prize fight scenes satisfied the crowd; occasionally there was a glimpse of some dancer waving wings in butterfly flights and theatrical pirouettes. The audiences were ahead of the mechanical and production capacity of the new entertainment. The first emphasis in the new industry was on the development and the sale of mechanical equipment.

9. A NEW INDUSTRY'S FIRST STEPS

Even before the transition from the peep show to screen, the programs supplied were not sufficient to supply the trade. Demand for more changes in programs created a demand for more performers. These actors were paid from $10 to $50 a picture and expenses from New York City to West Orange, N. J. and return. In 1896, a motion picture studio was established in New York City, where celebrities might be brought before the camera. Vaudeville houses began to show motion pictures after the last act of their performances; and the vaudeville screen continued to

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(*) "A Million and One Nights" by Terry Ramsaye, Volume 1, page 230. Publisher, Simon and Schuster, 1926.

be the main avenue to the public for approximately ten years. The length of films increased from the brief flash of 200 feet to the more satisfying length of 1,000 feet which is approximately equal to the short subjects of today.

In 1898, the "Passion Play" production made on the roof of the Grand Central Palace in New York City, contained 2,100 feet of film and sold for $580 per copy. This was the first directed screen production with continuous story. The film contained no titles.

Motion pictures made of the events of the Spanish-American war became the forerunner of modern newsreels. But these war pictures despite seeming fidelity to action were actually staged with tiny models of warships in tubs of water.

Up to November 3, 1899, the date of the Jefferies-Sharkey fight at Coney Island, New York, all efforts to make motion pictures under artificial lights had failed. Four hundred arc lights were used to photograph this Jefferies fight; three or four modern arc lights serve the needs today.

B. THE STORY-TELLING PICTURE, 1904

Even as late as the year 1900, pictures had not developed their story-telling possibilities to any extent. "The Great Train Robbery" produced in 1904 was the first picture to develop the story telling idea. This was a story especially designed for the screen. The Passion Play was a series of scenes patterned after the historic pageant at Oberammergau. The Great Train Robbery was 600 feet in length.

In 1905, the 1,000 foot reel "Raffles the Amateur Cracksman" was produced by the Vitagraph Company in its small studio on the roof of the Morse Building in New York. Raffles was a popular stage play and Vitagraph paid for the motion picture rights to this play by an agreement to give the owners credit on the main picture title. In 1907, the Kalem Company produced without first securing a filming right, a one reel "Ben Hur" adapted form General Wallace's popular novel; as a result the heirs of General Wallace sued and collected. The Legal character of film rights, which in modern production is an important element of cost, was thus established.

The advent of the story picture and its instantly favorable results placed the motion picture in the position of independent entertainment. The screen spoke a language that all linguistic groups could understand. In 1906, Biograph equipped its new studio with mercury vapor lamps. The Edison interests built a large studio in the Bronx and began to give its actor employees regular pay. Vitagraph opened a large studio in Brooklyn.

C. THE FIRST MOTION PICTURE "TRUST"

In 1907 every studio was a guarded stronghold. Producers were secretive concerning their methods; more important, they feared prosecution for infringement of the Basic Edison patents. Patent litigation which had hampered the Industry for a decade reached an armistice in 1908 with the formation of the Motion Picture Patents Company by all the leading interests in the Industry. All patents and claims to

special rights were then pooled.

In 1909, this patents company placed on operation a cross licensing arrangement whereby films produced on non-licensed equipment were not to be projected by licensed equipment, and vice versa. This set up a monopoly and stifled competition from independent producers. The independents used every conceivable method of circumvention and were aided by various licenses.

License violations caused the patents company to seek control of the film exchanges by the formation in 1910 of the General Film Company. This was the first national distributing organization and included 57 of the 58 exchanges then in existence. The exchanges were practically forced to sell out to the patents company under threats of license cancellation for violations of its complex rules. William Fox, a distributor, with strong financial and political allies, controlled a number of theatres in New York City and was able to resist the "trust".

The patents company held an exclusive contract for the raw film output of the Eastman Kodak Company until 1911 when the Eastman interests concluded that it was economically and legally dangerous to withhold the sale of raw film from the independent producers.

The General Film Company was dissolved by the Federal Courts in 1915. The Federal Trade Commission entered a "cease and desist" order against the Motion Picture Patents Company in 1915. In 1917 the United States Supreme Court held that the patents company could not enforce the exclusive use of licensed film on patented projectors in theatres. The decision became of tremendous importance with the introduction of sound; the electrical companies had no way then to prevent the interchangeability of product.

D. THE FEATURE PICTURE

In 1912 Adolph Zukor, who had entered the Industry in 1903 during its nickelodeon days, bought the American rights to "Queen Elizabeth", a four reel picture made in France, featuring Sarah Bernhardt. After considerable opposition, Zukor succeeded in having the production licensed by the patents company. This pretentious screen production was distributed to so-called "state right" distributors who leased the films with the exclusive right of releasing them to exhibitors within a given territory. In some contracts an outright purchase was actually made. This Queen Elizabeth feature was a radical departure from one-reel pictures which were a heritage from the vaudeville program when the vaudeville theatre was the chief avenue to the public for such pictures as were then made.

In 1913, the feature picture movement received a new impetus from abroad by the unprecendented success of "Quo Vadis" in eight reels; this show ran for 22 weeks in a large Broadway legitimate theatre with a top admission price of one dollar. Legitimate theatre interests then began to make arrangements to photograph stage successes.

The popularity of these features resulted in attempts by producers to provide a constant supply to exhibitors. These productions entailed an increase in cost from a few hundred dollars to many thousands. The existing distribution facilities required adjustment. David W. Griffith's epoch-making feature "The Birth of a Nation" (1914) was exploited independently as a road show. This famous picture broke all attendance records throughout the world. It is estimated that more than $15,000,000 has been paid in admissions for "The Birth of a Nation". This picture is still being shown in various parts of the world, and is still adding to its royalty records.

E. THE STAR SYSTEM - 1914

The present "star system" was a direct outgrowth of the feature picture. Adolph Zukor's announced policy of "Famous Players in Famous Plays" beginning with Sarah Bernhardt in "Queen Elizabeth" really marked the inauguration of the naming of stars and other talent on the screen. Mary Pickford, Mack Sennett, Charlie Chaplin, John Bunny, and many others soon became favorites of motion picture patrons.

In the latter part of 1914, Mary Pickford's popularity became so great that Adolph Zukor considered it advisable to meet all competitive offers of employment and retained her exclusive services for the Famous Players Company at an unheard of salary of $104,000 for the coming year. From this point on, actors sought large salaries and, for publicity purposes, exaggerated the salaries that they actually received. Producers began to announce bigger and bigger salaries than their competitors. The "Star System" was established.

On February 6, 1915 the Paramount Pictures Corporation which had a contract for the distribution of Zukor's productions announced that due to Miss Pickford's enormous salary, all future Pickford pictures would be first released to large city theatres charging a minimum admission price of twenty-five cents.

A general increase in prices of films was attributed principally to excessive salaries and to increased studio costs. No mention was made of salaries paid to executives. While conditions relating to salaries of executives may not be comparable with those existing twenty years later, the investigation made under the National Recovery Administration (*) indicated that executive salaries generally equalled or exceeded salaries paid to various types of professional talent.

(*) Report Regarding Investigation Directed to be Made by the President in his Executive Order of November 27, 1933, Approving the Code of Fair Competition for the Motion Picture Industry - Made by Sol A. Rosenblatt, Division Administrator, National Recovery Administration to Gen. Hugh S. Johnson, Administrator for Industrial Recovery, July 7, 1934,

F. BLOCK BOOKING BEGINS - 1916

In 1916, the Paramount Pictures Corporation announced a new policy relative to the distribution of motion pictures which caused alarm among the exhibitors. Exhibitors were required, as a condition to leasing the pictures they desired, to purchase also the entire product of the company. Thus was called into being the modern so-called "block booking" system (considered later in this report.)

G. MOTION PICTURE THEATRES

As the Industry developed beyond the point of makeshift entertainment in vaudeville houses and began to contest the position of the legitimate drama, theatres designed for the exclusive use of motion pictures sprang up throughout the country. The seating capacity of these new theatres often exceeded that of the legitimate houses; good seats were no longer limited to the orchestra section, there were no living voices to listen to and even fleeting facial expressions on the screen could be seen distinctly from any part of the house.

In 1914 the Mark-Strand Theatre with a seating capacity of 3,000 opened on Broadway, New York, to contest the supremacy of the legitimate theatre. Samuel L. Rothafel (Roxy), exponent of the modern elaborate presentation program, was employed for exploitation. The opening show, "The Spoilers", was a nine-reel feature adapted from the story of that name by Rex Beach. This is the first instance in motion picture history where an author was compensated on a royalty basis.

Several important local exhibitor chains were organized in various sections of the country. These chains were probably the most important buyers of film. Judging from the preponderance of investment in the exhibition division today, it is probable that even then the investment in exhibition amounted to many times more than the investments in production and distribution.

H. LOCATING IN CALIFORNIA

The rapidly increasing demands for program changes in thousands of new theatres caused producers in New York and Chicago to seek sunshine in Florida, Cuba, and California. Independent producers found that they suffered less difficulty from the activities of the patents pool when their operations were sufficiently removed from New York and Chicago.

Other reasons drew attention to the West Coast. In 1910, the Biograph Company set up studios in California for production during the Winter; the experiment became an annual winter migration for this company. No substantial investment was required and none was made. The Biograph winter quarters interested other producers. By 1913, the so-called Western comedies had become popular in the United States and in Europe. Studios in New York hummed with "Western" activity. All year around production became a necessity. The clear climate and sunshine of California induced several companies to establish open air studios on that coast. It was soon evident that "Westerns" photographed in the west were just as acceptable as those produced in New York, Philadelphia and Chicago, and production costs proved to be 50 per cent less.

Southern California in 1913-14 was in the feverish enthusiasm of a real estate boom. Real estate promoters were active in developing a suburban residential section outside of Los Angeles to which they had given the name Hollywood. Acreage, building materials and labor costs were inexpensive. Hollywood promoters brought the cameramen to the hills and valleys and persuaded them that the "locations" were made to order. As motion pictures produced there went into circulation the name Hollywood received national publicity. Studio by studio, production activities were transferred to Southern California. Financial control remained in New York, but that presented no difficulties. Hollywood was solidly established as the center of motion picture activities.

I. EXHIBITORS' STRUGGLE FOR CONTROL

In 1917, 27 of the principal theatre operators in the country formed the First National Exhibitors' Circuit, Incorporated, as a co-operative buying group to combat high film rentals and the practice of block booking. Its members not only secured film for their own theatres from the "combine" but also became distributors, operating film exchanges in their respective territories. The First National subsequently entered the production division of the Industry obtaining the services of many famous actors and directors.

The producers, most of whom up to 1917 had no interests in exhibition houses with the possible exception of a few large theatres used for advertising elaborate feature pictures during their opening run, met the new challenge for control by entering the exhibition division themselves.

Adolph Zukor purchased controlling interests in various localized circuits holding First National franchises. Marcus Loew, an important exhibitor and a consistent customer of the Famous Players-Lasky Corporation, entered the production division of the Industry by purchasing the Metro-Pictures Corporation. These two pioneers due to family connections and for various other reasons worked together and became the largest theatre owners in the world.

Independent exhibitors, alarmed at the power of both First National and Paramount, now began to form circuits wherever possible. Independent producers found great difficulty in selling their products due to a desire on the part of local circuits to remain on friendly terms with Paramount, which in a number of instances had built theatres in cities where exhibitors had refused to buy Paramount products. Step by step, first run theatres in large cities became closed to independont productions.

The Federal Trade Commission issued a "cease and desist" order against the Paramount Famous Players-Lasky Corporation, et al. in 1927 on the grounds that the Corporation was using coercive means to obtain control of theatres; that it "block booked" to exhibitors, and that it excluded the product of other producers from the theatres it controlled.

Paramount appealed from the Commission's ruling to the United States Circuit Court of Appeals which, in 1932, reversed the "cease and desist" order and denied the petition for its enforcement.

Meanwhile, in 1925, Paramount bought control of the important Balaban and Katz circuit in the middle west. The Paramount-Publix Corporation was then formed.

The theatre control movement of 1919, 1920, and 1921 suffered a reaction during the next few years. For instance, Famous Players-Lasky Corporation on September 1, 1924, controlled only 181 theatres, a decrease of 122 houses since 1922; First National's subfranchise holders diminished from 3,400 in 1921 to 2,700 in 1923. (*) In the case of Famous Players-Lasky it was found that several small town theatres were not profitable; and in the case of First National, a number of its subfranchise holders cancelled their agreements because they were required to take all pictures produced by the organization.

The small independent exhibitor encountered many difficulties during 1925 when he found himself in competition with the circuits. High rentals limited his capacity to secure desirable product; the circuits dominated first run showings of popular product. Consequently many small exhibitors formed "booking combines" and leased pictures by cooperative methods in an attempt to offset the buying power of the circuits. These cooperative efforts were usually not permanent due to distributor antagonism and internal dissensions, but for a time they did exercise considerable influence.

Meanwhile, the well-entrenched independent circuits became increasingly competitive with producer-distributors for retail outlets. Because of this factor as well as the competition offered by the "booking combines", a new theatre acquisition program was started in 1925. Mergers, consolidations and the construction of "deluxe" theatres throughout the country were made possible largely by the ease with which capital could be acquired.

The larger companies became clearly defined. Famous Players-Lasky, First National, and Loew's Incorporated led the field while Universal, Fox, and Warner Brothers were beginning to assume national importance.

The silent screen probably reached its climax during this period. Certainly it had reached its limitations under the technical and artistic resources of those responsible for the production of films during this period. In order to maintain sufficient attendance to justify the financial existence of elaborate theatres, extravagant stage presentations and supplemental forms of entertainment were brought in to bolster up box office receipts. (**)

J. THE ADVENT OF SOUND

The Motion Picture Industry in 1926-1927 was brought face to face with a critical situation brought on by rapid expansion but, quite suddenly, it was saved from impending disaster by the introduction of sound.

(*) "The Motion Picture Industry", Howard T. Lewis, Harvard University, Page 18, Publisher, Van Nostrand, 1933.

(**) "A History of the Movies" by Benjamin B. Hampton, Pages 330 and 374, Publisher - Covici-Friede, 1931.

This development revolutionized the Industry and revived a failing interest in motion picture entertainment. And once again, the Industry knew the excitement of a boom.

Theatres were built, bought, or leased on all sorts of terms. The desire to acquire theatres apparently dominated the minds of the Industry. Little attention was directed to problems of efficient management and operation. The promise of large profits due to synchronized sound made it possible to secure financial support without difficulty. Patrons were attracted to the theatres regardless of the quality of the pictures shown provided they were "all talkies". Due to the novelty of this new form of entertainment most of the theatre acquisitions showed profits.

Vitaphone, the Movietone and the Photophone were the names given to the three most important types of sound reproduction. Warner Brothers helped to develop the Vitaphone, Fox helped to develop the Movietone. The Radio Corporation of America due to its delay in entering the sound equipment field on a commercial basis formed the RKO Corporation involving production, distribution and exhibition of motion pictures largely to secure a market for its product. (*)

Extensive litigation might have resulted from the claims of various electrical engineering and manufacturing interests if the American Telephone and Telegraph Company, the dominant patent owner, had not suggested that all claims be peacefully adjusted for the common purpose of supplying necessary apparatus to the Industry. The dissolution of the old Motion Picture Patents Company may have had some bearing on this decision. But by means of this action, interchangeability of equipment was provided.

Marketing of the Western Electric equipment by Electrical Research Products Incorporated began in August 1927, offering the systems which embraced sound-on-film, sound-on-disc, and non-synchronous disc systems. Installations ranged from $8,000 to $15,000 in price depending upon the theatre and its acoustics.

While not regarded as a true sound picture, "Wings", which opened August 12, 1927, was accompanied by sound effects reproduced on a separate film run concurrently with the pictures. "Seventh Heaven" and "What Price Glory" were used to boom the cause of sound. "The Jazz Singer" starring Al Jolson swept the country like wildfire.

In May, 1928, Paramount, M-G-M, and United Artists contracted for Western Electric licenses. Universal and the Hal Roach Studios soon followed. The economy wave which had engulfed the Industry within the previous year gave way to competitive bidding for the best talent for sound films.

The American Federation of Musicians created a war chest of $1,000,000 to forestall encroachments of sound pictures. Campaigns against "canned music" were attempted throught the country. There was a con-

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(*) "A History of the Movies", by Benjamin B. Hampton, Page 388. Publisher- Covici-Friede, 1931.

certed drive against the substitution of mechanical music for the living musician in theatres.

Coast studios felt the onrush of sound and construction work was rushed to meet the demand for sound stages. Western Electric sound recording equipment was made available to independent producers in July, 1928.

Wired theatres prospered while unwired houses were without exploitation advantages. The year 1929 found sound pictures off to an auspicious start due to announcement of lower prices by Western Electric for either the Vitaphone or Movietone reporduction equipment for June 1st delivery at a price of $5,500 each or $7,000 for both.

The public wanted voices; there was no longer any demand for silent figures on the screen. Theatre owners placed contracts for installation of sound faster than equipment could be supplied. At the end of 1930, the number of theatres wired for sound was 9,350. The industry-saving new interest of the public in talking pictures is dramatically told in the estimate by the Hays organization that theatre attendance increased on the average, by 15,000,000 additional admissions weekly during that year.

1. SOUND IN PRODUCTION

The introduction of sound in production caused a change in style of making pictures and at the same time greatly increased the talent costs. More than 100 special sound stages were constructed, and millions of dollars in equipment installed. Old talent was eliminated in numerous instances and new talent with speaking and singing voices was introduced. An increase of approximately 5,000 employees was reported at the end of 1930. Approximately 99 per cent of all pictures produced in 1930 were sould or "all talkies". (*)

Electrical Research Products, Inc., a manufacturing subsidiary of Western Electric, producing sound recording apparatus of the variable density type, equipped Paramount, United Artists, Warner Brothers, First National, Fox Pictures Corporation, Metropolitan Sound Studios, and Universal Pictures Corporation.

Radio Corporation of America with Photophone built on the principle of variable area equipped Columbia Pictures Corporation, Radio Pictures, Pathe and Tiffany.

Independent producers of production apparatus sought markets for their products among small independent producers.

At the end of 1930, 60 per cent of the exhibitors were using the sound track method of projection and 40 per cent were using the disc method.

(*) Motion Picture Almanac - 1931

The introduction of sound caused control of the Industry again to come under a certain degree of domination by the electrical interests. Aside from the ownership of RKO by the Radio Corporation, the Electrical Research Products, Inc., had considerable interest in the activities of Fox, Warner Brothers and the Paramount Corporation. (*)

2. CONCENTRATION OF THEATRE OWNERSHIP AFTER SOUND

Sound caused a greater concentration of theatres under the ownership of a few large corporations. Installations and servicing costs were too great a financial burden for exhibitors of limited means. Priority of sound installations granted to the financially powerful circuits caused some loss of business to competing independents who thereupon gave up their theatres.

Warner Brothers, Paramount, Fox and RKO generally expanded their holdings. Warner Brothers purchased control of the Stanley Chain which in essence meant control of First National and the end of the exhibitor-producer-co-operative movement. Fox purchased the important Foli Circuit in New England for $20,000,000. However, his purchase of control of Loew's Incorporated for approximately $50,000,000 was upset by the Federal Trade Commission (**) whose bill of complaint declared that Fox and M-G-M controlled 40 per cent of the total production of pictures within America. The government alleged that Fox and Loew's Incorporated also controlled a large proportion of the leading first run theatres in the United States. In the New York metropolitan area it was contended that these two companies controlled at least 50 per cent of the total seating capacity.

The United Artists Corporation which had been founded in 1922 by Mary Pickford, Douglas Fairbanks, Charlie Chaplin, and David W. Griffith owned few theatres outright but shared partnership with Paramount in other theatres. Universal Pictures Corporation controlled a number of neighborhood theatres in the Schine Circuit in New York State and the Griffith group in Texas and Oklahoma.

While the above named affiliated companies held only approximately ten per cent of the total number of theatres (22,000), these corporations effectively dominated the Industry in 1930 through control of nearly all first-run and many of the best second-run theatres in the country. (***)

(*) "A History of the Movies", by Benjamin B. Hampton, Chapter 17, "Talkies" - Publisher - Covici-Friede, 1931.

(**) "A History of the Movies", by Benjamin B. Hampton, Page 393, Publisher - Covici-Friede, 1931.

(***) "A History of the Movies", by Benjamin B. Hampton, Page 392,393 Publisher - Covici-Friede, 1931.

K. GENERAL GEOGRAPHICAL LOCATION OF AFFILIATED CIRCUITS

From a geographical standpoint at the end of 1931, Paramount theatres were located primarily in the South, New England, and in the Chicago district. Fox theatres were mainly west of the Mississippi, dominating the West Coast, although it held important theatre holdings in metropolitan New York. Loew's and RKO controlled important theatres in New York City and also owned theatres in various parts of the country. Warner Brothers had a virtual monopoly in Philadelphia as a result of the purchase of the Stanley Circuit and controlled other theatres scattered throughout the United States.

L. THE IMPACT OF THE DEPRESSION

The market crash of October, 1929, did not immediately involve the Motion Picture Industry. Major producing companies were still engaged in a theatre acquisition campaign. Few theatres were wired for sound in October of 1929, but the fact that sound had arrived was probably the major factor sustaining the Industry through the trying days of '29 and '30.

TABLE I

THEATRES WIRED FOR SOUND BY YEARS(*)

YEAR	NUMBER OF THEATRES
1929	1,000
1930	9,350
1931	13,780
1932	14,805

(*) SOURCE: Motion Picture Almanac, Edition for 1933.

The volume of business done by the Industry in 1930 was approximately the same as that done in 1929. The increasing number of sound installations and the rapidly improving technique of sound production are the probable causes.

The contrast between motion picture and other industries was so startling that many investors decided that the "movies" were "Depression-proof" and bought stock in leading motion picture companies. Their fate may be read in the following table.

TABLE II

WEEKLY STOCK PRICE INDEXES

THEATRES MOTION PICTURE AND AMUSEMENTS (*)

In relatives, 1926 - 100 - 7 Stocks

YEAR	RANGE	
	HIGH	LOW
1928	143.1	105.1
1929	154.7	82.4
1930	154.1	61.6
1931	83.0	13.8
1932	20.4	5.7

 (*) See footnote on following page.-

As the novelty of sound wore off, the depression began to grip the industry.

Companies that in 1929 and 1930 had shown large profits were barely able to meet expenses in 1931, and in 1932 and 1933 sustained heavy losses. The folowing tables are illustrative.

(*) SOURCE: Materials bearing on Motion Picture Industry - Division of Research and Planning, September 20, 1933, Page 21 - NRA Files.

TABLE III

MOTION PICTURE PRODUCING CORPORATIONS

COMPARISON OF TOTAL ASSETS AND NET (*)
INCOME OR DEFICIT

1927 - 1933

Year	Total No. Concerns Reporting	No. Concerns Reporting "Net Income"	No. Concerns Reporting "No Net Income"	Total Assets All Concerns Reporting	Net Profit or Deficit All Concerns Reporting
1927	246	116	130		$10,348,000
1928	206	106	100		20,613,000
1929	243	101	142		48,650,000
1930	208	84	124	$933,847,000	30,030,000
1931	199	54	145	849,917,000	3,932,000
1932	195	44	151	411,622,000	(29,576,000) d/
1933	200	42	158	248,824,000	(36,204,000) d/

d/ Deficit

(*) Source: Tabulation Sheets of the Bureau of Internal Revenue, U. S. Treasury Department, Industrial Sub Group No. 76. Classification is based on predominant business of non-affiliated corporations or of groups of affiliated corporations filing a single income tax return.

TABLE IV

MOTION PICTURE THEATRE CORPORATIONS

COMPARISON OF TOTAL ASSETS AND NET (*)
INCOME OR DEFICIT

YEARS 1927 - 1933 INCLUSIVE

Year	Total No. of Concerns Reporting	No. of Concerns Reporting "Net Income"	No. of Concerns Report "No Net Income"	Total Assets All Concerns Reporting	Net Profit or Deficit all Concerns Reporting
1927	2,090	1,263	827		$24,041,000
1928	2,167	1,219	948		25,065,000
1929	2,339	1,293	1,046		30,119,000
1930	2,320	1,295	1,025	$618,791,000	37,783,000
1931	2,315	1,167	1,148	717,307,000	8,884,000
1932	2,582	587	1,995	986,684,000	-55,882,000 d/
1933	2,849	773	2,076	1,076,485,000	-32,297,000 d/

d/ Deficit

(*) Source: Tabulation Sheets of the Bureau of Internal Revenue, U. S. Treasury Department, Industrial Sub Group No. 77.
Classification is based on predominant business of non-affiliated corporations or of groups of affiliated corporations filing a single income tax return.

Producing companies were now forced to relinquish many theatres acquired during boom days. The preceding tables reflect this tendency in the shift of total assets from producing to exhibiting companies. The following table is illustrative.

TABLE V

ESTIMATED THEATRE INTERESTS OF MAJOR FILM COMPANIES (*)

1930 and 1935

Company	Estimated Peak Number 1930	Estimated Present Number 1935
Paramount Pulbix	1,600	1,200
Fox Film	1,000	300
Warner Brothers	600	500
Loew's Inc. (M-G-M Inc.)	200	165
Radio-Keith-Orpheum	200	90
Totals	3,600	2,225

(*) Source: "Standard Trade and Securities" published by Standard Statistics Co. - Theatres and Motion Pictures, issue of February 20, 1935, Page TH-47.

Attendance started to decline in 1931. In an attempt to recapture lost patronage, admission prices were lowered resulting in a further decrease in revenue.

TABLE VI

ESTIMATED BOX OFFICE RECEIPTS AND ATTENDANCE (*)

Year	Total Receipts (millions)	Average Admission Price	Attendance (millions)
1929	1,100	30	3,660
1930	1,100	28	3,920
1931	880	24	3,330
1932	625	22	2,840
1933	560	20	2,800
1934	650	20	3,250

(*) Source: Standard Statistics Company, Febraury 20, 1935

The number of theatres closed increased, reaching a maximum in 1933.

TABLE VII.

NUMBER OF MOTION PICTURE THEATRES OPEN AND CLOSED (*)

Date	Total	Open	Closed	Percentage Closed
Jan. 1932a/	20,100a/	15,473a/	4,627a/	23.0a/
Jan. 1933	19,311	13,416	5,895	30.5
Jan. 1934	18,371	13,736	4,635	25.2
Jan. 1935	18,263	14,552	3,711	20.3

(*) Sources: Motion Picture Almanac
a/ Standard Statistics Co., February 20, 1935, Page TH-46.

Annual expenditure on new theatre construction dropped in 1933 to less than a tenth of the 1929 figure.

TABLE VIII

ANNUAL EXPENDITURES IN THEATRE CONSTRUCTION (*)

Year	Amount
1929	$163,559,000
1930	97,580,000
1931	45,000,000
1932	17,500,000
1933 - Through April 1934. (16 months)	13,000,000
1934 - May to April 1935 (11 months)	20,000,000

(*) Source: Motion Picture Almanac.

In an effort to make ends meet, drastic economies were ordered in production studios. It is interesting to note, however, that although cost of production in 1933 was reduced 35 per cent from the 1929 figure, in the same period total compensation paid by the studios in wages and salaries was decreased only 16 per cent.

TABLE IX

COST OF PRODUCTION AND WAGES AND SALARIES PAID IN (*)
PRODUCTION, 1929 and 1933

	Dollars	
	1929	1933
Cost of Production	184,102,000	119,343,000
Wages	24,860,000	18,395,000
Salaries	60,168,000	52,949,000
Total Compensation	85,028,000	71,343,000

(*) Source: Department of Commerce - Census of Manufactures, 1933.

CHAPTER III

HISTORY OF THE CODE PERIOD

A - PRE-CODE

When the National Industrial Recovery Act was signed by the President on June 16, 1933, many industries hastened to take advantage of its provisions by submitting codes. These proposed codes were usually sponsored by trade or industrial associations. The Motion Picture Industry proved no exception.

During the months of June, July and August, 1933, more than 40 proposals regarding codes were submitted to the Administration by various associations within this industry. The multiplicity of views expressed in these proposals made three things apparent: (1) That no one trade association of group could be considered adequately representative of the industry as a whole, or even of any one branch thereof; (2) That no code for the Motion Picture Industry would be likely to succeed unless a code vertical in scope could be achieved covering production, distribution, and exhibition; and (3) That only by such means as conference and concession could the Administration hope to unify within any single, inclusive code the apparently irreconcilable proposals of the different branches of this Industry.

1. CODE FORMULATING COMMITTEES

For these reasons, Sol A. Rosenblatt, appointed Deputy Administrator in charge of Amusement Industry codes by the Administrator, General Hugh S. Johnson, called a meeting of prominent members of the Motion Picture Industry on August 8, 1933, at the meeting hall of the Association of the Bar of the City of New York for the purpose of aiding the Industry to name committees that would be truly representative of the various interests within each division.

Three committees were named, one each for producers, distributors, and exhibitors. Charles L. O'Reilly, President of the Theatre Owners Chamber of Commerce of New York City was appointed Coordinator for the Exhibitors Committee. Because the economic interests of producers and distributors are often identical, a single Coordinator, Sidney R. Kent, President of the Fox Film Corporation, was appointed to head these other two Committees.(*)

The Producers and Distributors committes working as a group, and the Exhibitors Committee, during the next two weeks formulated, exchanged, and discussed various code proposals. On August 23, 1933, the Exhibitor group and the Producer-Distributor group each submitted a set of proposals for a code to the National Recovery Administration.

(*) The names of the members of these committees together with their company or group affiliations may be found on Pages 2-3, Report of the Deputy Administrator on the Proposed Code of Fair Competition for the Motion Picture Industry, November 26, 1933. Files of National Recovery Administration.

2. PUBLIC HEARINGS ON CODE PROPOSALS

Public hearings on these code proposals were held in the large auditorium of the United States Chamber of Commerce Building, Washington, D. C., on September 12, 13, and 14, 1933.

Many controversial subjects were thoroughly discussed at the hearing. Representatives of producers, distributors, exhibitors, affiliated and unaffiliated interests, labor, the public, social and welfare groups, and other interested parties were heard. The positions of all groups concerned were adequately presented. Two hundred and six (206) witnesses spoke or presented briefs.

3. POST-HEARING CONFERENCES

Despite the progress made at the hearing, many problems remained unsolved. Weeks of conferences were held between representatives of disagreeing factions under the guidance of the Administration. As a result of these conferences, four revisions of the first draft of the proposed code were made. The last of these was approved by the President on November 27, 1933, and became effective as the Code of Fair Competition for the Motion Picture Industry on December 7, 1933.

During the post-hearing conferences, a group of independent exhibitors representing the Allied States Association of Motion Picture Exhibitors under the leadership of their general counsel, Abram F. Myers, a former Federal Trade Commissioner, quit the conferences alleging that they were unable to secure a fair deal. At a meeting of the Allied Association in Chicago on October 24, 1933, a resolution was passed charging the Deputy Administrator with bias and prejudice, and further charging that the proposed Code was prejudiced to the interests of the independent exhibitor. The Resolutions Committee of the Association was called to Washington by General Johnson to explain their charges. The charges were referred to Colonel R. W. Lea, Assistant Administrator for Industry, who after investigation declared them to be wholly unfounded.

4. APPROVALS OF PROPOSED CODE

Even before Presidential approval of the Code, assents were received by the Administrator from all the more important producers and distributors; from the Motion Picture Theatre Owners of America, an important exhibitor's organization; from the more important theatre circuits; and from all important labor organizations in the industry.

In addition to the above, some 9,039 written assents to the Code were filed with the Code Authority shortly after approval of the Code. Of these assents, 8,950 represented theatres, 60 represented distributors covering 31 exchange territories, and 29 represented producers. Of the assents received from theatres, 74% were filed by independents.(*)

(*) Reply of Sol A. Rosenblatt to the Report of The National Recovery Review (Darrow) Board. NRA Files.

B - THE APPROVED CODE OF FAIR COMPETITION

The Code as approved was necessarily a long and complex instrument since it was designed to cover production, distribution and exhibition of motion pictures, as well as vaudeville and other stage presentation in connection with exhibition. A brief analysis of the contents of the Code follows.

1. BRIEF ANALYSIS OF THE CONTENTS OF THE APPROVED CODE

The Code was divided into nine articles as follows:

Art. I. - Definitions of terms used in the Codes

Art. II. - Constitution and duties of the Code Authority

Art. III. - Mandatory labor provisions

Art. IV. - Labor provisions

Art. V. - Trade Practice provisions

Art. VI. - Constitution and duties of local agencies of the Code Authority

Art. VII. - Pledge of industry to maintain and uphold moral standards

Art. VIII. - Exclusion of sub-standard width and amateur motion pictures from provisions of the Code and miscellaneous provisions

Art. IX. - Mandatory and amending provisions.

(a) Definitions

Terms such as "producer," "exhibitor," "distributor," "employee," "clearance," "non-theatrical account," "affiliated exhibitor," "unaffiliated exhibitor," "associate producer," and other trade terms used in the Code are defined in Article I.

(b) Code Authority

The Code Authority consisted of five members representing affiliated interests, five members representing unaffiliated interests, three representatives of the Administration without vote, and labor representatives as required.

The industry representatives were named in the Code. This unusual procedure was considered necessary to prevent delay in beginning the administration of the Code due to the unorganized state of the industry.

(c) Labor Provisions

Article III of the Code contained the labor provisions made mandatory by Section 7(a) of the National Industrial Recovery Act.

Article IV contained all other labor provisions. This Article was divided into Division A, Division B, Division C, Part 1, and Division C, Part 2, dealing with labor in production, distribution, exhibition, and vaudeville and presentation respectively.

1. Production:- A general basic wage minimum of 40 cents per hour, and a maximum schedule of 40 hours per week for "white collar" labor and 36 hours per week for other labor was set by the Code. In addition to basic standards, minimum wage requirements for many types of skilled and semi-skilled labor were specified. In general, these represented an increase in wage rates of approximately fifteen (15) per cent. Provisions to safeguard the rights of talent and "extra player" groups were included.

An over-riding clause was inserted providing that whereever labor agreements previously in existence specified wage rates or schedules of hours more favorable to labor than those in the Code, such rates and schedules should supersede those in the Code.

2. Distribution:- The wage and hour requirements for the distribution branch of the industry were similar to those contained in the President's Reemployment Agreement.

3. Exhibition:- The Code provided that theatre employees in towns of less than 15,000 population should receive an increase in wage rates of not less than 20 per cent, provided such increase did not require a wage rate over 25 cents per hour. For skilled labor in towns of greater population, wage rates ranged from 25 to 35 cents per hour. Maximum hours were set at 40 per week.

It was further provided that if an American Federation of Labor union wage scale for bill-posters, carpenters, electrical-workers, engineers, firemen, motion-picture-machine-operators, oilers, painters, stage-hands, wardrobe-attendants, or other skilled mechanics and artisans was in effect anywhere in a given locality, the A. F. of L. wage scale should be used as the standard for determining the wage scale for all employees with like duties in comparable theatres in that locality. In carefully chosen phraseology, provision was made for the arbitration of disputes arising under this clause. These provisions of the Code and their application are discussed in Chapter V, Sub-Sections 4 and 5 of Section A - Exhibition.

An important agreement was included in the Code specifying that employers would not lock out employees and that employees would not strike pending the arbitration of any such dispute.

4. Vaudeville and Presentation:- A minimum wage from $25 to $40 per week was set for professional employees. Maximum hours were fixed at 40 per week except where regulation was obviously impossible. Careful provision for regulation of traveling companies was included.

5. General: - Employment of any individual under sixteen (16) years of age was forbidden throughout the Industry, except for child actors in production where State regulation was already adequate.

Labor in general was well satisfied with the Motion Picture Code. This was one of the very few codes signed and assented to at the time of its promulgation by accredited representatives of every important labor group involved.

(d) Trade Practice Provisions.

There were six general types of trade practice provisions in the Code. These are considered in salient detail in Chapter IV in some 50 subdivisions. For immediate comprehension of the Code as a whole, however, it is necessary to present at this point a general summary of these trade practices provisions. One set of Code provisions was designed to cover the industry in general. Three sets governed trade practices internally in each of the three divisions of the industry. Two sets related to trade practices between producers and distributors and between distributors and exhibitors. The more important trade practices are named in the following:

1. General: - Defamation of competitors by false imputation of unethical or illegal conduct; publishing threats of legal proceedings not in good faith; securing confidential information regarding a competitor's business by unfair means; paying sums beyond a fair value for personal services resulting in destructive competition, - these were declared to be unfair trade practices. The last provision was stayed in the President's Order of Approval and never became effective.

2. Producers: - Conspiracy to prevent renting of studio facilities by a responsible producer; nepotism; and enticement of a competitor's employees were declared to be unfair trade practices.

3. Producers-Distributors: - Permitting exhibition of a dramatic or dramatic-musical work before the date specified in a contract, and creating discord between a distributor and a producer with the effect of disturbing existing relations or pending negotiations were declared to be unfair trade practices.

4. Distributors: - Intimidation of exhibitors by threats to build competing theatres; substitution of one feature for another designated in a contract; forcing exhibitors to contract for an excessive number of short subjects as a condition of making a contract for feature pictures; transfer of assets to avoid fulfillment of a contract; unfairly designating play-dates, were declared to be unfair trade practices.

5. Distributors-Exhibitors: - Failure to arbitrate disputes, attempts to induce the breach of an existing contract, and unauthorized disclosure of confidential information were declared to be unfair trade practices. In addition, it was stipulated that where an exhibitor had booked pictures in a block, and the average license fee was not more than $250, the exhibitor should be given the privilege of cancelling ten (10) per cent of the pictures under contract without having to pay for the cancelled pictures.

6. Exhibitors: - Over-buying pictures with the effect of depriving a competitor of product; lowering admission prices by giving rebates in the form of lotteries; coupons; two-for-one admissions, or other devices; transfer of assets to avoid completion of a contract; advertising a feature previous to completion of a prior run, and interference with lease negotiations were declared to be unfair trade practices. Where 75 per cent of the unaffiliated exhibitors and 75 per cent of the affiliated exhibitors in a competitive territory agreed that the practice of "give aways" or premiums was unfair, the practice was prohibited by the Code.

(e) Local Code Administration Agencies

The problem of supervising equitable clearance allotments - that is, the time-lap between a first showing of a picture and its permitted second and subsequent showing in other theatres - was delegated to "Clearance and Zoning Boards" which were set up in each exchange territory.

An appeal could be taken to the Code Authority by any party from any decision of a local Grievance Board or local Clearance and Zoning Board. These boards became extraordinary Courts of Industry - a new departure in industrial regulation. The activities of these boards and their influence are discussed in Chapter IV, Section B, Clearance and Zoning.

2. SCOPE OF THE CODE

As defined in the Code, the Motion Picture Industry included "without limitation, the production, distribution, or exhibition of motion pictures and all activities normally related thereto, except as specifically excepted from the operation of the Code."(*)

The exception mentioned stated that nothing in the Code should be deemed to apply to "the production, distribution, or exhibition of motion pictures on film of recognized substandard widths, or to slide films, or to non-theatrical motion pictures designed primarily for educational, scientific, industrial, commercial, advertising, selling, or other non-theatrical purpose, or to television of motion pictures, provided that the commercial production, distribution, or exhibition of such films shall be subject to investigation by the Code Authority to determine whether such production, distribution, or exhibition of such films is unfair competition to an established motion-picture theatre or theatres. If found to be unfair competition, the Code Authority shall promulgate rules and regulations governing such unfair competition."(**)

3. SUBJECTS CONSIDERED AT HEARINGS BUT OMITTED FROM APPROVED CODE

A number of points were brought up at the public hearing and at the code formulation conferences which were omitted from the approved Code when it was impossible to obtain agreement from all factions. The more important of these proposals sought the elimination of block-booking, the elimination of "score" charges, the elimination of double features,

(*) Article I, Section 1 of Approved Code, Number 124
(**) Article VIII, Part 3 of Approved Code Number 124

the regulation of poster exchanges, and the "right to buy-right to sell" controversy. The intent of these proposals is briefly discussed in the following section.

(a) Block-Booking

It had long been the practice in the industry for distributors to offer exhibition contracts for pictures in blocks of 10 to 50. It was urged in behalf of this practice that block-booking stabilized production and allowed wholesale selling and distribution with consequent savings in costs. Exhibitors, on the other hand, claimed that this method of selling forced them to contract for pictures that they did not wish to exhibit in order to get those they did. Welfare and moral purpose groups opposed the practice. The consumer pressure they were able to exert on the local exhibitor was greatly dissipated they declared when the exhibitor claimed that it was necessary for him to contract at one and the same time for pictures, whether of the type this group approved or of the type then disapproved, even before the pictures had been manufactured.

During the formulation of the Code, considerable pressure was brought by exhibitors to have the practice of block-booking outlawed under the Code. A compromise was affected whereby the exhibitor who contracts for pictures in a block should have the privilege of cancelling ten (10) per cent without having to pay for them. A more complete study of the block-booking problem and the ten (10) per cent cancellation privilege is introduced later in this report.

(b) Double Features

To meet the competition of larger prior-run houses, many smaller exhibitors resorted to the practice of showing two or more features on one program. First run and affiliated exhibitors opposed the practice. This viewpoint was backed by the American Federation of Women's Clubs, various church groups, and a number of other social betterment societies. It was the desire of these groups to separate motion pictures so that one feature alone could be shown on a program. This they contended would enable them to exert censorship powers by means of a "white list" of approved pictures. The value of these lists was lost on a double-feature program; though one feature might be approved, the other might be of a type deemed by these groups to be unsuitable for juvenile or family trade.

On the other hand, independent producers and distributors opposed any attempts to regulate the practice; the double feature market, they said, was necessary for their business existence. Almost 15,000 protests were received by the National Recovery Administration against the elimination of double features. When it was deemed impossible to obtain any agreement on the practice, all mention of double features was eliminated from the Code.

(c) Poster Exchanges

Distributors, in addition to their other activities, often sell advertising material. This has led to the formation of "poster exchanges."

It is a practice among some exhibitors, on finishing with advertising material bought from a distributor, to sell it to a poster exchange for resale by the "exchange" to some subsequent exhibitor. Distributors attempted to prevent this practice and retain their increased revenue from the sale of advertising material by placing in each exhibition contract a clause stipulating that the exhibitor should buy advertising material only from the distributor.

Savings to exhibitors through the use of "poster exchanges" were sufficient to cause them to ignore these provisions in exhibition contracts. It was too expensive for a distributor to attempt to collect for these violations through the courts and besides there was always the risk of alienating a good customer. The distributors proposed that provisions regulating the activities of poster exchanges be included in the Code. Opposition by exhibitors was vociferous and persistent. Any mention of poster exchanges was therefore omitted from the approved Code.

(d) Score Charges

Producers pay royalties for licenses to use music and sound recording equipment. This cost is frequently passed on in the form of a "score charge" to the exhibitor as a part of the license and rental fee for a picture. Exhibitors contended that this cost should be charged off by producers as one of the costs of production and should not be passed on to the exhibitor as a separate charge.

The claim was made that use of the "score charge" as a separate item allowed the distributor to discriminate between different exhibitors. For example, it was charged that where an independent and an affiliated theatre both paid the same license and rental fee for a picture, the independent often was required to pay an excessive "score charge" but the affiliate was not required to pay. The question becomes largely academic when it is considered that the fee paid by an exhibitor in order to exhibit a picture is entirely a subject of individual negotiation between the parties concerned. No mention of "score charges" was made in the approved Code.

(e) The "Right to Buy" - "Right to Sell" Controversy

Independent exhibitors occasionally find it impossible to buy the product of a major company for the run they desire, particularly where they are in competition with an affiliated theatre, and even though they offer to pay a higher rental. Independents contend that in these instances the major companies try to monopolize the business by withholding proper product from the independent. Accordingly, a "right-to-buy" provision was advanced by independent exhibitors. The term became the slogan of the independent exhibitors; so much so, in fact, that the legal implications of the term were often lost sight of.

The major interests, on the other hand, contended that the full value of a film, particularly with reference to subsequent run exhibition, might be lost by permitting first run exhibition in an unsuitable house or without proper exploitation, advertising, and presentation; and so countered

with a "right-to-sell" slogan. They declared that regulation of this practice would be tantamount to putting motion pictures in the class of public utilities, at least as regards the distributor-exhibitor relationship.

The opposing factions could come to no agreement on this subject; no mention of it appeared in the final approved Code.

4. THE EXECUTIVE ORDER APPROVING THE CODE

The Executive Order approving the Code of Fair Competition for the Motion Picture Industry was issued on November 27, 1933. The Code became effective ten (10) days later, on December 7, 1933.

(a) Conditions in the Executive Order of Approval

There were six conditions as to approval in the President's Order.

The first condition stipulated that because of the unusual expedient of naming the members of the Code Authority in the Code, the Administration should have the right to review and, if necessary, to disapprove any act of the Code Authority or of any committee or board named by it.

The second condition stated that if any member of the Code Authority failed to act in a fair, just or equitable manner, the Administration reserved the right to remove such person and appoint another individual in his place.

The third condition stated that if, in the administration of the Code, it was found that any class was not sufficiently represented on the Code Authority, the Administration should have the right to appoint further members from that class to the Code Authority.

The fourth, fifth, and sixth conditions related to the suspension pending further investigation of certain provisions of the Code which dealt with specified types of creative workers and with excessive Hollywood salaries.

(b) Effect on the Industry

When the conditions in the Executive Order of Approval became known, the major producers and distributors voiced general dissatisfaction and threatened to withdraw their support. It seemed to these members of the Industry that assent to the conditions mentioned would give the President direct control over the Motion Picture Industry. Representatives of the industry conferred with the President, the Administrator for the National Recovery Administration, the Division Administrator in charge of the Code, and the General Counsel of the National Recovery Administration. As a result of these conferences, the Administrator issued a memorandum interpreting the Executive Order and the conditions of approval. (*)

(*) Administrative Order Number 124-4 dated December 9, 1933, signed by General Hugh S. Johnson, Administrator for Industrial Recovery.

The interpretation declared that the Administrator did not in any sense consider the first three conditions in the Executive Order of Approval as creating any right of appeal from the determination of the Code Authority to the National Recovery Administrator. In other words, the paragraphs mentioned were interpreted as giving the Administrator the right to inquire into the general course of conduct under the mechanism of the Code rather than as constituting him a court of review of the actions of the Code Authority in any individual case.

It was further stated that the Administrator would exercise the power granted in the Executive Order only in accordance with the recommendations of at least a majority of the voting members of the entire Code Authority, and that any person appointed under the powers granted would be selected in the manner provided in the Code. Accepting this interpretation, the dissenting producers and distributors signified their assent to the Code.

The dissenting leaders of the Allied States Association of Motion Picture Exhibitors hailed the conditions in the Executive Order as a major victory in their fight to secure drastic changes in the Code. They bitterly denounced the interpretation in which the Administrator stated he would exercise the power granted him in a limited fashion only.

With the exception of the Allied States Association, reaction to the approval of the Code by the President by both employers and employees throughout all branches of the industry was excellent.

C. THE CODE AUTHORITY

As heretofore mentioned, the ten industry members of the Code Authority were named in the Code to prevent delay in beginning Code Administration. (*)

1. DIVISION OF REPRESENTATION ON THE CODE AUTHORITY

The Code Authority was set up on the theory that the principal division in the industry was between affiliated and unaffiliated interests. Consequently, five members of the Code Authority were selected to represent affiliated producers, distributors, and exhibitors, and five other members to represent unaffiliated producers, distributors, and exhibitors.

(a) The Buyer-Seller Controversy

Some independent exhibitors expressed dissatisfaction with this division. To them, the important line of cleavage in the industry was between buyers of film and sellers of film. They further considered that an affiliated exhibitor properly belonged in the seller class.

It must be pointed out that this last contention holds true only a part of the time; competition for product does exist between affiliated theatres. Few theatres can be operated properly using only one company's product. Thus an affiliated theatre, although part of the time a seller through its connection with a distributor, must be considered a buyer in

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(*) Article II, Section 2 of the approved Code.

its negotiations for product with other companies. The independent theatre maintains that this tendency for the affiliated exhibitor to be a seller, only as regards his own company's product, and a buyer the rest of the time is partly or wholly negated through master contracts and unwritten reciprocal agreements between the major companies.

Based wholly upon the independent exhibitor's definition of what constitutes a seller of film, the Code Authority consisted of eight sellers and two buyers.

This question of division of representation arose several times during the period of Code Administration. Independent exhibitor witnesses appeared before the Darrow Board in March and April, 1934, and contended that their representation on the Code Authority should be increased. The same contention was advanced before the Senate Finance Committee in April, 1935, during the Senate investigation of the National Recovery Administration.

The most active group in this contention was the same Allied States Association of Motion Picture Exhibitors mentioned as opposing the proposed Code during the post-Hearing conferences. Not all independents shared the Allied States view. Other independent exhibitors approved of the method of compromise and concession that had been adopted. The following is quoted from the February 17, 1934, issue of "Harrison's Reports," and independent exhibitor's trade paper:

> "I say.....just as I have said to every exhibitor, that we went into this Code proposition without a shirt and came out of it with something - with 25 reforms. One of the reforms is costing the producers millions of dollars - the 10 per cent cancellation provision; and correspondingly it saves the Exhibitors millions of dollars."

2. LABOR REPRESENTATIVES

Provision was made in the Code that whenever any question affecting the welfare of any class of employee was being considered by the Code Authority, a member of such class of employee should sit with and become for that purpose a member of the Code Authority with the power to vote. These labor members were to be selected by the Administration from nominations made by the class affected. Only two such selections were made. (*) This procedure was seldom used since the Code Authority did not often consider labor conditions.

At the time of the Supreme Court's Schechter decision, the Code Authority was considering a plan for the handling of labor problems directly by the Code Authority upon authorization by the Administration and to that end was seeking the appointment of labor representatives for each employee class. The procedure specified was satisfactory where

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(*) Administrative Order Number 124-2 dated November 27, 1933, signed by Hugh S. Johnson, Administrator for Industrial Recovery, appointing Miss Marie Dressler and Mr. Eddie Cantor to represent the actor class of employee before the Code Authority.

employees were unionized, but presented difficulties where employees were unorganized.

3. ADMINISTRATION MEMBERS

In addition to industry and labor members on the Code Authority, provision was made in the Code that the Administration should have the right to appoint three members, without vote, to act as a liaison between the Code Authority and the National Recovery Administration. Dr. A. Lawrence Lowell of Harvard University was offered an appointment on November 27, 1933, but refused the offer. (*) On December 6, 1933, Sol A. Rosenblatt was appointed Administration member on the Code Authority (**) and on May 17, 1934, Claire Boothe Brokaw received a similar appointment. (***) On March 1, 1935, William P. Farnsworth, then Deputy Administrator, Amusements Division, was appointed as the third Administration member. (****)

4. ALTERNATES

The Code provided for appointment by the Code Authority, with the approval of the Administration, of permanent alternates to act in the place of regular members in case of absence, resignation, or ineligibility.

The Code Authority also allowed temporary alternates to attent meetings and vote in place of members or permanent alternates. These temporary alternates were not approved by the Administration.

The use of temporary alternates was abused in administration of the Code. At many Code Authority meetings not more than one or two regular members or permanent alternates were present. The others were temporary alternates, usually subordinate members of the legal departments of the various companies.

According to a letter from Nathan Young, independent exhibitor representative on the Code Authority, to Abram F. Myers, when questions arose that required a sacrifice by any or all of the major companies, the subordinate was inclined to vote to protect his company's interest, where-

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(*) Correspondence relative to this may be found quoted pages 1290-1293 inclusive. Hearings before Senate Committee on Finance, Investigation of NRA pursuant to S. Res. 79, 74th Congress, 1st Session.

(**) Administrative Order Number 124-3, signed by Hugh S. Johnson, Administrator for Industrial Recovery.

(***) Administrative Order Number 124-17, signed by Hugh S. Johnson, Administrator for Industrial Recovery.

(****) Administrative Order Number 124-48, signed by Sol. A. Rosenblatt, Division Administrator, Amusements Division.

as the member or permanent alternate was of sufficient authority in his own company to commit the company to a sacrifice for the benefit of the Industry. (*)

Abuse might have been prevented by refusing a vote to temporary alternates and requiring that motions be passed by a majority of voting members present, thus making it to the interest of each party to insure proper representation either by a member or by a permanent alternate at each meeting.

5. RULES OF PROCEDURE

By-laws adopted by the Code Authority were approved by the National Recovery Administration on September 28, 1934. (**) It was stipulated in these by-laws that the Code Authority operate under Cushing's "Rules of Parliamentary Procedure."

To prevent the possibility of a group not being represented when a vote was taken, the rule was adopted that to pass any motion or proposal a majority of the voting members of the Code Authority (at least six affirmative votes) would be required, rather than a majority of whatever were present at any meeting. Under this ruling, absence or refusal to vote was equivalent to a negative vote. This provided a convenient device when a member of the Code Authority did not wish to go on record as opposing a motion but still preferred that the motion be denied.

D. ASSENTS TO THE CODE

It was stipulated in the Code that no distributor or exhibitor should be privileged to file any complaint under the Code unless he had previously filed a statement of compliance with and assent to the Code with the Code Authority. (***) Accordingly, immediately upon beginning administration of the Code, the Code Authority formulated and published an approved form of assent.

1. OBJECTIONS TO FORM OF ASSENT

The required form of assent was objected to strenuously by leaders of the Allied States Association of Motion Picture Exhibitors. It was alleged that any exhibitor executing the required form of assent would thereby waive the right to protest under general or statutory law against any arbitrary, oppressive, or injurious action by the Code Authority, and further, that the exhibitor would surrender his rights to seek amendment

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(*) Quoted page 1287, Hearings before Senate Committee on Finance, Investigation of NRA pursuant to S. Res. 79, 74th Congress, 1st Session.

(**) Administrative Order Number 124-31, signed by Sol A. Rosenblatt, Division Administrator, Amusements Division.

(***) Article VI, Part 2, Section 8 of the approved Code.

or modification of the Code. Abram F. Myers, general counsel of Allied States, advised the members of his organization to execute the assent with reservations, the form of which he supplied, and of which the following are examples:

> 1. "I/We, _____, execute and subscribe to the Code of Fair Competition for the Motion Picture Industry, approved by the President by Executive Order dated November 27, 1933, under protest, such execution and subscription having been imposed as a condition precedent to the right to file complaints with and defend my/our interests before the Code Authority and the several boards established by said Code."
>
> 2. "I/We execute the Code on the following interpretations, understandings, and conditions:
>
> 1. My/Our action is not to be construed as an agreement to arbitrate controversies relating to clearance and/or zoning before Clearance and Zoning Boards or the Code Authority as constituted in said Code.
>
> 2. The above-mentioned Executive Order of the President is to be carried out according to its plain meaning and is not to be interpreted so as to destroy the protection against arbitrary or oppressive action afforded thereby.
>
> 3. This does not constitute a waiver of any rights now enjoyed under any law, decision, judgment, or decree, and does not preclude the undersigned from seeking additions to or modifications of said Code, or bar me/us from taking any legal action necessary to protect my/our rights or interests.
>
> 4. I/We agree to comply with all the requirements of the National Industrial Recovery Act."

The Code Authority refused to accept such qualified assents, even though in many cases checks contributing to Code Authority expenses were attached. Checks and qualified assents were returned to the senders.

2. INTERPRETATION OF FORM OF ASSENT

Failing to move the Code Authority or the National Recovery Administration, a suit was filed against the Code Authority in a Federal District Court by the Congress Theatre, Newark, New Jersey, a member of the Allied States organization, claiming that the requirements of assent without qualification was illegal. In the alternative, the complainant requested that the provisions of the Code itself be declared unconstitutional.

An interpretation (*) with regard to assents was shortly thereafter issued by the National Recovery Administration. The Congress Theatre suit was then dropped. The interpretation declared:

> 1. No person waived their rights under general or statutory law to protest against any oppressive, injurious, or unreasonable action by any administrative official or agency under the Motion Picture Code.
>
> 2. No person assenting to the Code was precluded from seeking amendment or modification of the Code.
>
> 3. Members of the industry not assenting to the Code could still partake of benefits provided by the Code, but by doing so became liable to assessment to help defray expenses of administering the Code.
>
> 4. While assent was necessary to enable a person to file a complaint with the agencies of the Code, such assent was not necessary to interpose a defense in any matter affecting such persons interests.
>
> 5. The above applied to all assents, whether executed in the past or the future.

At a later date, a suit was filed by the Independent Theatre Owners Association of New York in the Federal Court, Southern District of New York, attempting to compel the local boards to consider complaints filed by members of the Association, even though such members had not assented to the Code or contributed towards Code expenses. The suit was denied, the Court holding that complainants were in an inconsistent position, attempting to benefit under the Code without contributing to its upkeep.

3. EXTENSIONS OF TIME LIMIT IN WHICH TO FILE ASSENTS

To prevent delay in the filing of assents, a provision was contained in the Code requiring assents to be executed within forty-five (45) days after signature of the Code by the President, or within forty-five (45) days after entering into the Motion Picture Industry.(**)

It was found that many members of the industry, particularly in the exhibition branch, did not wish to sign assents and so make themselves liable for assessments until they had a chance to see how the Code would work out. To take care of these delinquents, the time limit in which assents could be filed was extended four times, the last extension being good until August 15, 1934. (***)

(*) Administrative Order Number 124-8, February 21, 1934, signed by Hugh S. Johnson, Administrator for Industrial Recovery.

(**) Article VI, Part 2, Section 8 of the approved Code.

(***) Administrative Orders Number 124-6, January 8, 1934, Number 124-7, January 29, 1934, Number 124-10, March 3, 1934, Number 124-22, July 3, 1934, all signed by Hugh S. Johnson, Administrator for Industrial Recovery.

4. ELIMINATION OF TIME LIMIT IN WHICH TO FILE ASSENTS

After the various extensions, it appeared that the only future effect to be expected from the time limit provision in the Code would be to keep persons who otherwise might wish to do so from filing assents to the Code. For this reason the time limit in which to file assents was removed on October 8, 1934, by amendment of the Code. (*)

E. LOCAL AGENCIES OF THE CODE AUTHORITY

Clearance and Zoning Boards and Grievance Boards were set up in each of thirty-one (31) key exchange cities to act as local agencies of the Code Authority and assist in the administration of trade practices affecting the exhibition and distribution branches of the industry. The discussion that now follows is a brief review of the organization, the duties and the accomplishments of these boards. Extended consideration of problems inherent in the industry as handled by these boards is included in Chapter IV of this study.

1. SELECTION OF MEMBERS TO LOCAL BOARDS

As soon as the Code became effective on December 7, 1933, the Code Authority began to name members to the Clearance and Zoning Boards and the Grievance Boards.

It was necessary to name 217 members to the local Clearance and Zoning Boards and one hundred and fifty-five (155) to the local Grievance Boards. Of the three hundred and seventy-two (372) appointments, three hundred and seventy (370) were by unanimous vote of the Code Authority.

There was disagreement on two members named to represent independent exhibitors on local Grievance Boards, one in Massachusetts and one in Texas. Nathan Yamins, independent exhibitor representative on the Code Authority, filed a minority brief on these two cases. (**)

2. CLEARANCE AND ZONING BOARDS

(a) Duties

Local Clearance and Zoning Boards, as set up in each of thirty-one (31) "key" exchange cities, were empowered to set up schedules of clearance and zoning between theatres at the beginning of each year to apply through the ensuing selling season, such schedules to apply to all theatres in the exchange territory covered. After these schedules were set up any exhibitor could complain of an alleged inequity and if he failed to receive

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(*) Amendment Number 3, approved by Administrative Order Number 124-34, signed by G.A. Lynch, Administrative Officer, for the National Industrial Recovery Board.

(**) Investigation of National Recovery Administration by Senate Committee on Finance pursuant to Senate Resolution Number 79, 74th Congress, First Session, Pages 1284-6 incl.

relief from the local Board, he could appeal to the Code Authority.

Clearance is that unit of time which by agreement must elapse between a showing of a picture and any subsequent exhibition of the picture in a competitive territory. Zoning refers to the area in which theatres may be considered to be competitive. A detailed discussion of these practices as such appears in Chapter IV of this report.

(b) Membership

Each Clearance and Zoning Board consisted of seven members. Two represented distributors, one affiliated with theatres and one unaffiliated with theatres. Two represented first-run theatres, one affiliated with a distributor and one unaffiliated. Two represented subsequent-run unaffiliated theatres. One member was to be an impartial representative of the Code Authority. This member was to have absolutely no affiliation with any branch of the industry and was to vote only in cases of a tie. Men and women distinguished, in their respective regions, for public service were asked to give their time; selection was careful and slow. There was no other difficulty in selecting these members. It is noteworthy in NRA experience that, through Clearance and Zoning Boards and Grievance Boards, the general public actually participated in the management of an industry.

(c) Delay in Submission of Schedules.

It was proposed to have schedules for each territory finished by January 1, 1933. In practice, however, the membership of the local boards had not been agreed upon by this date. Accordingly, the National Recovery Administration by Administrative Order permitted the Code Authority to fix a later date for the submission of schedules. (*)

Other difficulties immediately arose. It was found practically impossible to draw up schedules satisfactory to all parties. In many places, previous customs under which clearances had been granted were claimed to be inequitable, yet any attempt to correct the inequities of the situation resulted in a number of protests. Any theatre whose clearance was changed or any theatre in competition with such a theatre became a potential protester.

There was at first no standard set of principles to govern the drafting of clearance and zoning schedules. As a result, plans from different exchange centers differed materially in principle. Finally the Code Authority released a set of rules to be followed by the local Clearance and Zoning Boards in formulating schedules. (**)

(*) Administrative Order Number 124-5, December 28, 1933, signed by Hugh S. Johnson, Administrator for Industrial Recovery.

(**) "Principles of Clearance" Code Authority Release September 13, 1934, in National Recovery Administration files - Motion Picture Industry - Clearance and Zoning Schedules.

(d) Amendment to Permit Consideration of Individual Clearance Inequities

The time in which schedules were to be filed was extended from time to time by resolution of the Code Authority, finally naming July 1, 1934, as the limit date. During this time, little could be done because schedules were not approved to eradicate existing clearance evils. The Code Authority therefore proposed an amendment to the Code to permit the local clearance and Zoning Boards to hear complaints against existing inequities whether a schedule for the territory involved had been approved or not. This amendment was approved by the National Recovery Administration on June 13, 1934, and became effective July 3, 1934. (*) From that time on, administration of the clearance and zoning provisions moved in comparatively smooth waters. Pressure on the local Boards to hastily formulate schedules was removed. In fact, the new way to deal with clearance inequities worked so well that it was suggested that formulation of schedules be abandoned.

3. GRIEVANCE BOARDS

(a) Duties

The Code authorized local Grievance Boards to act as the local agencies of the Code Authority in the administration of trade practice provisions of the Code for the distribution and exhibition branches of the industry other than those provisions covered by the local Clearance and Zoning Boards. (**) The principal problems comprised (1) overbuying of film to stifle competition; (2) lowering of admission prices by means of lotteries and the like; (3) prior advertising; and (4) complaints arising under the ten (10) per cent cancellation clause on pictures bought in block.

(b) Membership

Local Grievance Boards were set up in each of thirty-one (31) key exchange cities and had jurisdiction in the appropriate exchange territory. Each board consisted of five members. Two were distributors, one affiliated and one unaffiliated. Two were exhibitors, one affiliated and one unaffiliated. The fifth was a member of the public to serve as an impartial member and to represent the Code Authority. He could have no connection with any branch of the industry and could vote only in case of a tie.

A repetition of the buyer-seller controversy that arose over the division of representation on the Code Authority was staged with regard to the local Grievance Boards. The independent exhibitors defined an affiliated exhibitor as a seller of film, and on that base asserted that the local Grievance Boards were weighted three to one in favor of the seller. This was allegation made by independent exhibitor witnesses before the

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(*) Amendment Number 1, approved by Administrative Order Number 124-20 signed by G. A. Lynch, Administrative Officer, by authority of the National Industrial Recovery Board.

(**) Article VI, Part 2 of approved Code, Number 124.

Darrow Board sessions in Washington in 1934, and repeated before the Senate Finance Committee in its investigation of the National Recovery Administration in April, 1935. The dire eventualities prophesied apparently did not materialize. No situation was brought to the attention of the National Recovery Administration where it was deemed advisable to over-rule the decision of a local Grievance Board, nor any decision of the Code Authority in the case of an appeal from a local Grievance Board.

(c) Authorization as Local Industrial Adjustment Agencies.

To conform to the procedure required by the National Recovery Administration, the Code Authority on April 6, 1934, appointed a Trade Practice Complaints Committee composed of Charles C. O'Reilly, and J. Robert Rubin, members with vote, and Sol A. Rosenblatt, member without vote but with veto power subject to review by the National Recovery Administration. This committee was authorized to set up the local Grievance Boards as local industrial adjustment agencies to handle all complaints excepting production, vaudeville, presentation and labor complaints. Authorization to handle trade practice complaints in the first instance was granted on April 17, 1934. (*)

(d) Analysis of Cases Considered

According to a report received from the Code Authority by the National Recovery Administration the local Grievance Boards heard 1,576 complaints during the period of their operation. Of these, 400 or 25.4 per cent were appealed to the Code Authority.

The National Recovery Administration received and has on file 291 of the decisions handed down by the Code Authority on appeals from local Grievance Boards' rulings. An analysis of these cases shows that the Code Authority affirmed the local Board decisions 88 per cent of the time. Of these appeals, 51.7 per cent dealt with Bank Night, Race Night, Screeno and other methods of lowering admission prices declared by the Code to be a violation of the Code; 21.7 per cent dealt with over-buying; 6.2 per cent dealt with prior advertising; 5.5 per cent dealt with interference with lease negotiation; and 4.8 per cent dealt with unfair competition by non-theatrical accounts.

This contrasts with an analysis of cases heard by local Grievance Boards from their inception to April 1, 1935, which was submitted by the Code Authority. This shows that 56 per cent of the total of one thousand, three hundred and sixty-one (1,361) cases considered dealt with Bank Night and the like; 12.1 per cent with over-buying; 18.8 per cent with prior advertising; 1.8 per cent with interference with lease negotioations; and 3.7 per cent with unfair competition by non-theatrical accounts. This same report shows that relief was granted by the local Grievance Boards in

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(*) Administrative Order Number 124-16, signed by Sol A. Rosenblatt, Division Administrator, Amusements Division, National Recovery Administration.

approximately 60 per cent of all cases. No breakdown is available to show the localities in which relief was afforded.

(e) Analysis of Relief Granted

Analysis of the two hundred and ninety-one (291) Code Authority decisions on appeal shows that relief to complainants was given in approximately 71 per cent of all cases of appeals on trade practice violations. The following table shows the way this relief - or justice as in equity - is distributed with regard to type of complaint:

TYPE OF VIOLATION CHARGED	NUMBER OF CASES CONSIDERED BY CODE AUTHORITY	PER CENT COMPLAINANTS GRANTED RELIEF*
Bank Night and like devices	150	93.8
Over-buying	63	28.6
Prior Advertising	18	77.8
Interference with Lease Negotiations	16	18.8
Non-theatrical Accounts	14	92.9
Lowering of Admission Prices Specified in Contract	10	90.0
10% Cancellation Clause,	4	66.7
Other	16	16.7

* In determining per cent relief, cases remanded to local Board for further hearing or cases in which only part relief was granted were not considered.

F. SPECIAL COMMITTEES

Provision was made in the Code for the appointment of various committees to study and make recommendations with regard to problems in the production branch of the Industry. These committees were known as the Agency Committee, the Actor-Producer Committee, the Writer-Producer Committee, the Studio Labor Committee and the Standing Committee on Extras.

1. AGENCY COMMITTEE

The Agency Committee consisted of five (5) producer members and five (5) other members representing actors, writers, directors, technicians and agents. (*)

The function of this committee was, after due notice of hearing and with the approval of the Administrator, (1) to set up rules of fair practices governing relations between actors, writers, directors, technicians, agents and producers; (2) to recommend to the Administrator uniform terms and conditions and appropriate procedure for the registration of all agents with whom producers might transact business relating to the production of motion pictures; (3) to formulate appropriate rules and regulations affecting agents and to provide revocation or cancellation of such registration in case of violation.

The committee submitted a set of proposed rules of fair practices on September 12, 1934. A notice of hearing was issued and after two adjournments, a public hearing was held. The heat of controversy over the relations of agents, producers, actors and writers had died down apparently, for the presentation of statements from the half dozen spokesman present at the hearing was lukewarm. The proposals from the agents looked forward to a control of relationships beyond their powers as parties not subject to the Code itself. The counter-proposals of the producers involved regulation of agents, writers and technicians who were not members of the Industry, nor employees and were therefore not subject to the Code. That there was need for a just determination of the problems recognized by the Code was admitted on both sides, but it was apparent that no practicable formula for adjustment had been achieved. (**)

The National Recovery Administration, through Division Administrator, Sol. A. Rosenblatt, accordingly judged that the proposed rules as submitted did not tend to effectuate the policies of Title I of the National Recovery Act and were beyond the powers and without the scope of the duties delegated to the Agency Committee and so denied approval of these rules without prejudice for further submission. (***)

(*) Personnel of this committee and all correspondence regarding activities of this committee will be found in National Recovery Administration files, under Motion Picture Industry, Code Authority - Agency Committee.

(**) Transcript of Public Hearing on Report of Agency Committee, November, 1934. Motion Picture Industry Files, National Recovery Administration.

(***) Administrative Order 124-41 - November 26, 1934, signed by W. A. Harriman, Administrative Officer for the National Industrial Recovery Board.

2. THE WRITER-PRODUCER COMMITTEE

The Writer-Producer Committee, consisting of five (5) representatives of producers and five (5) writers, was appointed by the Code Authority under Article IV, Division B, part 4, of the approved Code to determine a set of fair practices governing relations between producers and writers. Suggested rules and regulations were submitted to the National Recovery Administration but a hearing had not been scheduled up to the time of the Schechter decision by the Supreme Court.

3. THE ACTOR-PRODUCER COMMITTEE

The Actor-Producer Committee, set up by the Code Authority, consisting of five (5) producer representatives and five (5) actor representatives, was directed to submit recommendations as to a set of fair practices to govern relations between actors and producers.

This committee could reach no agreement. The actor members drew up a set of fair practice rules and a vote was taken on each rule contained therein. On each one the producer representatives voted "no" and the actor members voted "yes".

After this complete deadlock, the actor members submitted a brief in support of their contentions to the Administration. (*) This brief contains some interesting data contrasting remuneration received by actors and executives. No report of this committee received any official approval of the National Recovery Administration. Most of the demands of the actors, however, were met by the producers through the Academy of Motion Picture Arts and Sciences. There was one major exception: The producers did not agree to recognize the Actors Guild, an organization affiliated with the American Federation of Labor.

4. THE STANDING COMMITTEE ON EXTRAS

(a) Membership and Duties

The Standing Committee on Extras was appointed by the Code Authority pursuant to Article IV, division A, section 3 of the approved Code and consisted of five (5) producer representatives and five (5) representatives of extra players. The function of this committee was (1) to recommend rules and regulations to be adopted by all casting agencies and all producers with respect to extras; (2) to interpret and supervise any provision made for extras and (3) to receive and pass on complaints and grievances concerning extras.

(b) Reports and Recommendations Submitted

The minimum rate of pay for extra players depended in large part on the wardrobe required. The Standing Committee on Extras adopted an interpretation of the provisions of the Code with regard to dress

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(*) National Recovery Administration Files under Motion Picture Industry - Code Authority - Actor-Producer Committee.

requirements for extras on February 19, 1934, and submitted it to the National Recovery Administration. Approval was granted on March 6, 1934. (*)

A set of rules and regulations to govern extras was formulated by this Standing Committee and submitted to the National Recovery Administration. These recommendations dealt with such subjects as transportation of extras to and from employment, pay on location work, pay for hazardous work, damage to wardrobe incurred during production, cancellation of calls, meal periods, hours of employment, and travel time on one day location. The report was approved on September 27, 1934, by the National Recovery Administration. (**)

(c) Activities as Agency for Adjustment of Labor Complaints.

Although never approved formally by the National Recovery Administration as an official agency for the adjustment of labor complaints in the first instance, the Standing Committee on Extras claimed this power was specifically granted by the Code. (***)

This claim was not formally recognized by the National Recovery Administration. It was understood that complaints regarding extras might be heard by the committee in the first instance with the proviso that an appeal might be taken from any decision of the committee to the regular National Recovery Administration Compliance Office by any interested party. According to a report released to the trade papers, the committee during its life heard 1,065 complaints regarding extras and of these satisfactorily adjusted 981, or 92%. (****)

5. THE STUDIO LABOR COMMITTEE

(a) Duties

A Studio Labor Committee to investigate complaints and disputes relating to studio labor and to adjust them by mediation, arbitration or conciliation was set up by the Code Authority under the general powers to appoint committees. (*****) The jurisdiction of this committee

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(*) Administrative Order No. 124-11 signed by Sol. A. Rosenblatt, Division Administrator, Amusements Division.

(**) Administrative Order No. 124-30 signed September 27, 1934, by Hugh S. Johnson, Administrator for Industrial Recovery.

(***) Article IV, Division A, Section 3, Part 1 of Approved Code No. 124.

(****) Page 1 - Report issued by Standing Committee on Extras, published in Film Daily, issue of July 24, 1935.

(*****) Article II, Section 4 of Approved Code No. 124

extended to all studio labor complaints with the exception of those relating to actors, writers, directors, supervisors and extras.

(b) Activities as Agency for Adjustment of Labor Complaints.

The Compliance Division of the National Recovery Administration objected to the formation of this committee on the grounds that the duties proposed extended to the adjustment of labor complaints and the Motion Picture Industry Code Authority had never been approved by the National Recovery Administration as an agency for the adjustment of labor complaints. The Labor Advisory Board also objected to the committee. In policy, the Labor Advisory Board opposed labor committees appointed by code authorities; however, the Board had no complaints to make relative to performance. The Compliance Division after investigation informally recognized the right of this committee to hear complaints regarding studio labor provided that any interested party might appeal any decision of the committee.

After eight months of operation, Division Administrator Sol. A. Rosenblatt stated, "No decision of the Board has been disrupted nor has any appeal been taken. This is noteworthy in view of the fact that all studios are uniformly affected by the decisions of this Board." According to a report released by the Code Authority to the trade papers of the Motion Picture Industry, 262 complaints were heard by the committee during its period of operation and of these 258, or 98.5% were satisfactorily adjusted. (*)

G. FINANCING THE CODE AUTHORITY

1. BUDGET FOR 1934

On April 6, 1934, the Code Authority submitted a proposed budget and basis of contribution for the Motion Picture Industry to the National Recovery Administration.

This budget proposed a total expenditure of $360,000 for the year 1934. Of this amount one-half was to be contributed by the exhibition branch and one-half by the producers and distributors. The assessment for theatres was to be based on population, seating capacity and the classification of the theatre as a first, second or subsequent run house. The basis of assessment for producers and distributors was not submitted at this time, further study being deemed necessary. The proposed budget was approved by the National Recovery Administration on April 13, 1934.(**)

(a) Change in Budget to Provide for Legal Expenses

On June 8, 1934, the Code Authority passed a resolution authorizing its legal committee to expend a sum not to exceed $5,000 to cover the cost

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(*) Code Authority Statement published in Film Daily, Page 1, issue of July 24, 1935.

(**) Administrative Order No. 124-14 signed by Sol A. Rosenblatt, Division Administrator, Amusements Division. The itemized budget will be found attached to this Administrative Order.

of engaging counsel to defend litigation against members of the local Grievance Boards, local Clearance and Zoning Boards, the Code Authority and the Executive Secretary of the Code Authority. This constituted an amendment and an addition to the budget. The legal expense item was approved by the National Recovery Administration on June 28, 1934. (*)

2. AMENDMENT OF CODE TO PROVIDE FOR BUDGET OBLIGATIONS

After the approval of the budget, the legal division of the National Recovery Administration raised the point that it should be the policy of the National Recovery Administration to include in each Code specific provisions regarding budgets for Code Authority expenses. Accordingly an amendment to the Motion Picture Code known as Amendment No. 2 was approved on July 27, 1934. (**)

In part his amendment read as follows:

"Amend Article II as follows: Add to Section 10, sub-section (b) the following:

"Upon approval by the Administrator of an itemized budget of such expenses and an equitable basis of contribution thereto, each such member shall be legally obligated for, and shall pay to the Code Authority, his or its respective equitable contribution, subject to rules and regulation pertaining thereto issued by the Administrator. Failure to pay such equitable contribution shall constitute a violation of this Code. In addition to all other rights and remedies with respect thereto, the Code Authority shall have the right to institute legal proceedings for the collection of any such equitable contribution."

3. BASES OF ASSESSMENT FOR 1934

The Code Authority now proposed a basis of assessment for the producers and distributors for the year of 1934. The assessments were to be divided as follows: $150,000 was to be contributed by the larger producers and distributors, the remaining $30,000 by the other producers and distributors. All producers and distributors with their proposed assessment were listed individually and assessments ranged from $72.00 a year to $20,000 per year. This basis of contribution was disapproved on August 17, 1934. (***)

(*) Administrative Order No. 124-21 signed by Sol. A. Rosenblatt, Division Administrator for Hugh S. Johnson, Administrator for Industrial Recovery.

(**) Amendment No. 2 approved by Administrative Order No. 124-24 signed by Hugh S. Johnson, Administrator for Industrial Recovery.

(***) Administrative Order No. 124-26 signed by Leon Henderson, Director, Division of Research and Planning, for Hugh Johnson, Administrator for Industrial Recovery.

A new basis of assessment for producers and distributors for the year 1934 and for exhibitors for the last half of 1934 was now proposed. Distributors under this plan were to pay the Code Authority an amount based on their gross rental; a proportion of this expense was to be passed on to the producers in proportion to their individual division of funds. The assessment of the exhibitors while still based on the factors of picture run, seating capacity and population was revised somewhat. These new bases of assessments were approved by the National Recovery Administration on November 7, 1934. (*)

It was then realized that the mechanism approved brought collections from exhibitors and distributors only. Accordingly the basis of assessment was still further revised, making it clear that distributors acts as agents of the Code Authority in collecting revenue from the producers.

4. REVISED BUDGET FOR 1934

The year 1934 being finished by this time it was found that expenditures by the Code Authority had been somewhat less than anticipated. Only $203,589.12 had been spent for the year 1934. A revised budget and bases of contribution were approved March 7, 1935. (**)

5. USE OF 1934 SURPLUS

Since no provision had as yet been made for 1935 expenses and since the Code Authority had surplus funds on hand, expenditure of these surplus funds to cover expenses of the first four months of 1935 was approved by the National Recovery Administration on April 4, 1935. (***)

6. BUDGET AND BASES OF CONTRIBUTION FOR 1935

A net budget and bases of contribution for 1935, differing little from the budgets finally approved for 1934, were submitted and approved by the National Recovery Administration on April 24, 1934. (****)

(*) For Exhibitors - Administrative Order No. 124-37 and for Producers and Distributors - Administrative Order No. 124-38, both signed by Leon Henderson, Director, Division of Research and Planning for the National Industrial Recovery Board.

(**) Administrative Order No. 124-49 signed by Hiram S. Brown, Assistant to the Administrative Officer for the National Industrial Recovery Act.

(***) Administrative Order No. 124-52 signed by Hiram S. Brown, Assistant to the Administrative Officer for the National Industrial Recovery Board.

(****) Administrative Order No. 124-55 signed by Hiram S. Brown, Assistant to the Administrative Officer for the National Industrial Recovery Board.

7. LIQUIDATION OF ASSETS OF CODE AUTHORITY

When the Code became inoperative, the Code Authority liquidated its assets. An audit of the Code Authority's affairs made by Price, Waterhouse and Company of New York City and quoted in Film Daily, issue of July 24, 1935, showed that a total of $341,880.37 had been contributed to the Code Authority after it had begun operations on December 7, 1933. This was made up of $183,089.37 from the producer-distributor group and $158,791.00 from the exhibitor group.

It was found that the Code Authority had at the time of the audit $15,999.50 on hand, in cash, and undeposited checks amounting to $7,874.16. These funds represented the balance after the payment of all bills. It was decided to make refunds of the cash on hand to members of the Industry in good standing in proportion to their contribution. The undeposited checks were returned. Of the surplus cash, producers and distributors in good standing as of May 27, 1935, received funds aggregating $8,576.96 and exhibitor members in good standing at the same date received $7,431.54.

8. SUMMARY OF COLLECTIONS

At the time the Code became inoperative, total budgets of $374,786.89 had been approved for the operation of the Code Authority for the year 1934 and for the first half of the year 1935. A total of $341,880.37 had been collected from members of the Industry. In other words, during the entire period of the operation of the Code a little more than 91% of all assessments had been collected. Approximately 98% of the assessments against producers and distributors had been paid and approximately 85% of the assessments against exhibitors.

9. LACK OF FINANCIAL PROBLEMS

The Industry's interest in its own Code did not wane with the passing of time. At the time of the Supreme Court decision in the Schechter case, the Code was passing into the period of its most successful operation.

At the beginning, some difficulty had been experienced in selecting a proper method of budget assessment. Some members had objected to paying their assessments. However, by the start of the year 1935 most of these problems had been taken care of and payment of assessments to the Code Authority was looked upon by most members of the Industry as a matter of course. The lack of any financial problems may be seen in the fact that the Code Authority was able to finance operations for the first four months of 1935, from the 1934 surplus.

Article II, Section 10 (c) of the Code stipulated that any person who failed to pay promptly any assessment or levy made pursuant to an order of the Code Authority as an expense in administering the Code should not be entitled to file any complaint under any Article or Part of the Code. This was the only method of compulsion used by the Code Authority in levying assessments.

H. ADMINISTRATIVE ACTIONS OF THE NATIONAL RECOVERY ADMINISTRATION

1. AMENDMENTS

Amendments 1, 2 and 3 have already been discussed in this chapter. A fourth amendment was approved on March 11, 1935. (*) This amendment comprised a number of minor changes in the Code. The jurisdiction of the Code was limited to the Continental United States and to the Territory of Alaska since it had been found impracticable to set up Boards required under the Code in other Territories of the United States.

A new section was added to the Code, stipulating that no exhibitor should enter into any agreement for services of a kind usually performed by theatre employees directly compensated by exhibitors unless such agreement provided that no person actually engaged in rendering such service should be employed under less favorable labor conditions than those provided for in the Code. This provision was added to take care of a type of "chiseling" which might arise under the Code and had not been foreseen by the framers of the Code.

A number of minor changes were made in the Code provision relating to vaudeville and presentation labor. The expediency of these changes had been pointed out during actual Code operation.

The time in which the Code Authority was requested to hand down its decision in any case that had been appealed from a decision of a local Clearance and Zoning or a local Grievance Board was extended since experience had shown that an insufficient time had been allowed under the original provision.

Two amendments were under discussion at the time the Code became inoperative. One of these dealt particularly with compensation of motion picture machine operators in the vicinity of New York City (see Chapter on Labor). The other proposed amendment was to take care of a situation which had arisen with regard to local Clearance and Zoning Boards. As originally constituted these Boards were intended only to make up schedules; by amendment, they were later empowered to hear individual complaints of inequitable clearance and zoning allotments. Thus, when a case arose involving the property of a member of a local Board, that member found himself acting both as judge and advocate in a problem affecting his own interests. The proposed amendment would have provided for a substitute of the same class in such a case.

2. EXEMPTIONS

Only five (5) exemptions were granted during the life of the Code.

It was stipulated in the Code that appeal might be taken to the Code Authority from a decision of local Boards provided such appeal was filed within five days after the decision had been handed down. In two cases

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(*) Administrative Order No. 124-51 signed by W. A. Harriman, Administrative Officer for the National Industrial Recovery Board.

parties who had failed to file an appeal within the required five (5) days, later wish to do so. Exemption was requested by each theatre and granted. (*) (xx)

The Code stipulated that no producer or distributor should enter negotiations regarding distribution of pictures prior to 60 days before the completion of an existing contract. Walt Disney Products, Limited, requested an exemption from this provision on the ground that it caused individual hardship. This exemption was granted March 23, 1934. (**)

The Radio City Music Hall, New York City, requested an exemption from the Code stipulation that a chorus person should not be called for rehearsal before 9 A. M. The Music Hall states that on the day a show was changed and a new routine instituted, the permitted rehearsal time was insufficient, particularly during a holiday season. Consequently this theatre desired to call the chorus at 8 A. M. instead of at 9 A. M. agreeing to pay time-and-a-half for the hour over-time. Exemption from this provision was requested twice and granted both times. (x)

Only one request for exemption from the provisions of the Code was denied by Administrative Order. (***) Two other requests for like exemption were in the process of being denied at the time the Code became inoperative.

3. LABOR COMPLAINTS

Labor complaints in the production branch of the Industry were handled chiefly through committees of the Code Authority which have already been commented on. Labor complaints in the distribution branch of the Industry for the most part went through regular National Recovery

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(*) Administrative Order No. 124-43, January 23, 1935, signed by Sol A. Rosenblatt, Division Administrator, Amusements Division granting exemption to Herman J. Brown, Inland Amusement Company, New Majestic Theatre, Nampa, Idaho.

(xx) Administrative Order No. 124-54, April 15, 1935, signed by Sol A. Rosenblatt, Division Administrator, Amusements Division granting exemption to Broadway Amusement Company, Broadway Theatre, Butte, Montana.

(**) Administrative Order No. 124-12 signed by Sol. A. Rosenblatt, Division Administrator, Amusements Division.

(x) Administrative Order No. 124-44 and Administrative Order No. 124-45 dated January 25, 1935, and signed by Sol. A. Rosenblatt, Division Administrator, Amusements Division.

(***) Administrative Order No. 124-46 dated February 1, 1935, signed by Sol A. Rosenblatt, Division Administrator, Amusements Division, denying application of J. A. Gallaher operating the Braddock Theatre, Braddock, Pa., for exemption from labor provisions.

Administration compliance machinery. It is interesting to note in connection with minimum wages for the distribution branch of the Industry that the minimum weekly wage specified in the Code prevailed regardless of the number of hours worked, under the code maximum. (*)

In the exhibition branch of the Industry, complaints regarding skilled labor were for the most part dealt with directly by the Amusements Division of the National Recovery Administration without going through the usual Compliance Division channels. Complaints regarding unskilled labor in this branch of the Industry were taken care of by the Compliance Division. No major labor difficulties marked code administration. A complete discussion of the labor provisions of the Code, complaints arising under these provisions, and the method of adjustment together with the Hollywood salaries investigation and the special study of the "extras" problem comprises Chapter V on Labor in this survey.

I. INVESTIGATIONS INTO OPERATION OF CODE

1. THE NATIONAL RECOVERY REVIEW BOARD.

On March 7, 1934, President Roosevelt set up by Executive Order No. 6632, the National Recovery Review Board which became known from the name of its chairman as the Darrow Board. On March 26th and 29th and on April 3d and 4th, 1934, this Board held hearings with regard to the Code of Fair Competition for the Motion Picture Industry. Twenty-one witnesses, chiefly independent exhibitor members of the Allied States Association of Motion Picture Exhibitors, were heard. As expected, these witnesses attacked the Code and things pertaining to it. An answering brief submitted by the major companies was "deemed of small moment" by the Board and apparently was not considered. The National Recovery Administration files on the Motion Picture Industry were not consulted and no attempt was made to make use of the knowledge or experience of the National Recovery Administration's Division Administrator who had been in charge of this Code every step of the way.

On the basis of such testimony as it heard, the Darrow Board attacked the division of representation on the Code Authority; the division of representation on the local agencies of the Code Authority; the integrity of the members of the Code Authority; the integrity of the Division Administrator in charge of the Code and the Code itself on the ground that all these factors were prejudiced against the interests of the independent exhibitor.

Apparently, the Darrow Board waived aside the fundamental differences between this Industry operating under the copyright laws and other industries operating under laws of purchase and sale. Many of the recommendations of the Darrow Board would have required drastic changes in the copyright laws in order to become effective.

A lengthy reply to the report of the Darrow Board on this Code was made by Sol A. Rosenblatt, Division Administrator in charge of the Code

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(*) Administrative Order No. 124-37, dated February 28, 1935, signed by Sol A. Rosenblatt, Division Administrator, Amusement Division.

answering in detail the strictures of the report. Further criticism and comments were made by the National Recovery Administrator, Hugh S. Johnson, and by Donald R. Richberg, General Counsel of the National Recovery Administration. John F. Sinclair, who was vice-chairman of the Darrow Board was quoted in the Baltimore Sun of May 8, 1934, as follows:

> "Not in my 25 years of business and research experience, during which time I have been a member of many boards and committees of investigation, have I witnessed such utter disregard for fair play on the basic facts as the National Recovery Review Board under Clarence Darrow, had shown, even at its open hearings.
>
> "Such attitude in times like these is nothing short of tragedy.
>
> "I have opposed from the beginning the kind of sloppy, one-sides, half-information, that is the foundation upon which the Darrow-Russell Report has been written."

The report itself and the reply of the Division Administrator are of such nature that abridgement is difficult. It is suggested that both documents be considered in complete form. (*)

2. SENATE FINANCE COMMITTEE

Senate Resolution 79 ordered an investigttion of the National Recovery Administration before the Senate Committee on Finance. Two witnesses, Abram F. Meyers, General Counsel for the Allied States Association of Motion Picture Exhibitors and Melvin Albert, representing the Independent Theatre Owners' Association of New York City, testified and presented briefs to the Committee regarding the Motion Picture Code. Records answering the allegations of these two witnesses were filed with the chairman of the Senate Committee by Division Administrator Rosenblatt. The testimony given by the witnesses restated their charges before the Darrow Board. (**)

(*) The report of the Darrow Board may be found in National Recovery Administration Files - Motion Picture Industry - Code - Report of the National Recovery Review Board.

The replies of Hugh S. Johnson, Donald R. Richberg, and Sol A. Rosenblatt are quoted in full in the record of Hearings before the Committee on Finance, United States Senate, 74th Congress, 1st Session pursuant to Senate Resolution 79 Investigation of the National Recovery Administration - Part VI - Pages 2002 to 2005, inclusive.

(**) Investigation of National Recovery Administration pursuant to Senate Resolution 79 - 74th Congress, 1st Session - Testimony of Abram F. Meyers pages 1271 to 1302, inclusive. Testimony of Melvin Albert pages 1310 to 1329, inclusive. Papers filed with the Committee by Sol A. Rosenblatt and Abram F. Meyers, pages 1972 to 2031, inclusive.

CHAPTER IV

TRADE PRACTICES IN THE MOTION PICTURE INDUSTRY

In the complicated competition within the Motion Picture Industry, business methods have developed during the last 30 years that are individual to this Industry in their comparative lack of analogy to the trade practices of other industries. It seems at times as though all the general rules of business had been put aside and that the Motion Picture interests had decided to use only the exceptions. Yet, in daily practice, there is an active play of competitive forces determining the kind of pictures produced, the showmanship of presentation, the convenience of theatre locations and equipment and the rental prices paid by exhibitors and the prices charged the public for the attractions it desires to see.

These competitive forces are two: The first is within the Industry itself as between producers, majors and independents, and between theatres--affiliated and independent. The second comes from without. The Industry's product is entertainment and competes with all other forms of entertainment for popular approval. The public has its choice--radio programs to be enjoyed at home; the legitimate theatre; social engagements--the dance or the bridge party; sporting events--or an exciting evening with Sherlock Holmes, Philo Vance or other detective heroes. These are definite factors that, among others, influence attendance at motion picture houses and the prices that the public can be induced to pay at the box office.

Motion picture entertainment is subject to another factor of competition; that is the imponderable of public enthusiasm which flickers into flame and wanes in unpredictable predilections for certain types of pictures and certain personalities of the celluloid world. Theda Bara and her slow allure is succeeded by the emotional velocity of Clara Bow or Jean Harlow. The anaemic passion of Greta Garbo may yield in public favor to the vital magnetism of a Claudette Colbert. It was John Gilbert yesterday; Clark Gable today. The homespun wit and drolleries of Will Rogers and the ruthless villainies of a Charles Laughton vie for patronage from a public ever changing its likes and dislikes. Mickey Mouse unites the world in understanding. Shirley Temple shakes her curls and smiles and overnight a Maurice Chevalier loses his popularity. These are box-office factors that start new competitions in the amusement field.

The total of these forces is a restraining influence preventing the Motion picture Industry from a full and unrestrained exercise of the natural power of copyright monopoly for each picture released by exacting an unlimited price from the public. In industry relations, the anti-trust laws are presumed to prevent agreements that might otherwise readily happen. There is competition among producers for stars and box-office names; there is competition between the major producers themselves and between majors and independents for favorable playing dates at theatres. There is competition among producer-and-distributor-controlled theatres and, in turn, between these affiliated houses and the independent theatres. Based on seating capacity, the prevailing spending habits of the public in his own neighborhood, the number of competing theatres, there is a too high for an exhibitor to pay in leasing pictures for his theatre.

And except for producer-owned theatres, having exclusive rights to the producer's best featured pictures, there is competitive rivalry throughout the exhibition field in bidding for the pictures announced as forthcoming releases.

The important trade practices arising from these competitive forces are the concern of this Chapter. Some of the provisions sought to be written into the Code by various interests would have strengthened monopoly power and restricted free competition. Some practices, long in use in the Industry, were prohibited by the Code as not being sound or fair competition. Some practices--notably block-booking--are fields of acute controversy in which two or more economic philosophies clash. The purpose here is to present the controversy as it exists and to weight the strength of sides. In order as presented, a survey is made of over-buying; clearance and zoning; block-booking and cancellation priviliges; forcing of short subjects; rebates on admission prices; designated play dates and other trade practices.

A. OVER-BUYING

1. DESCRIPTION OF THE PRACTICE

Over-buying is a practice that developed in the Motion Picture Industry as competition became keener in the entertainment centers within cities and towns; its intent was, and is, to deprive a competing exhibitor of sufficient desirable feature pictures to meet his normal requirements; it has, in laissez-faire economics, the blessing usually accorded to the greater purchasing power. The Industry generally regards the use of this instrument to destroy competition as inherently wrong.

Up to the Code period, the Industry had been unable satisfactorily to meet this problem and eliminate unfair over-buying. Approximately 85 per cent of the complaints submitted to the Deputy Administrator by exhibitors during the pre-code period related to some form of over-buying.(**)

Three methods of over-buying were generally recognized:

1. An exhibitor licensed more feature pictures than he used in operating his theatre thus "freezing" the surplus.

2. An exhibitor adopted an operating policy of unnecessary and too frequent changes of program.

3. An exhibitor exacted from a distributor, as a condition to entering into a contract, that the distributor refrain from licensing pictures to a competitor.

2. CODE REGULATION OF OVER-BUYING

The Code provisions specifically declared each of these three methods to be unfair trade practices, as well as any other similar act with the same intent and effect. (**)

(*) The report of Deputy Administrator on the proposed Code of Fair Competition for the Motion Picture Industry, October 26, 1933 - Page 7.

(**) Article VI, Part 2, Section 1 of the approved Code.

The Code not only declared that over-buying, however undertaken, was unfair, but sought to grant affirmative relief to the exhibitor who had been injured. Local Grievance Boards set up in 31 key cities were given the authority to direct that an offending exhibitor surrender the over-bought pictures to the complainant involved. This procedure, of course, necessitated abrogation of an existing legal contract. But this significant step in industrial self-government was made possible by the method of securing the voluntary agreement of the distributor who, as a possible innocent party to the contract, might have successfully resisted interference with his rights as a contractor. The Code secured this voluntary agreement by directing that the benefitting exhibitor should at least meet the terms contained in the license agreement between the distributor and the exhibitor called upon to surrender his surplus films. Decisions of local Grievance Boards could be appealed to the Code Authority of the Motion Picture Industry by any party to the dispute. (*)

3. PROCEDURE DEVELOPED IN CODE APPLICATION

In the actual application and interpretation of the Code provisions regarding over-buying, the Code Authority gradually evolved procedures and supplementary principles. The decisions of the Code Authority on appealed cases created precedents which guided local Boards in later decisions.

The simplest form of over-buying consisted in buying more pictures than could be shown and freezing the surplus. In this case determinations were made by a simple mathematical calculation after allowances for the expectancy of non-deliveries (**) and for the number of pictures cancelled under the cancellation clause (***) For example, an exhibitor making three changes per week will show about 156 pictures a year. Suppose that he has licenses 250 pictures. Allowing approximately 32 pictures for non-deliveries and exercise of rights under the cancellation clause, he would have contracted for approximately 62 pictures more than his reasonable requirements. In such instances, the offending exhibitor would be required to release 62 pictures.

Exhibitors usually cloaked their over-buying under various disguises. The Code framers, experienced in the practices of the Industry, shrewdly inserted a clause prohibiting over-buying by "the adoption of an unfairly competing operating policy of unnecessary or too frequent changes of motion pictures." (****) For example, suppose the exhibitor mentioned in the example above had adopted a policy of four changes per week,

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(*) Article VI, Part 2, Section (a) of the approved Code.

(**) Article V-E, Part 2 of the approved Code.

(***) Article V-F, Part 6 of the approved Code.

(****) Article VI, Part 2, Section 1 (b) of the approved Code.

requiring 208 pictures instead of 156 per week. He would then have circumvented the test for straight mathematical over-buying. In an alternative case, he might have adopted the policy of using double features, or he might have used a combination of both methods, ostensibly raising his requirements to as high as 415 pictures a year. Detection of such subterfuges was naturally difficult; the date of the adoption of these devices held special significance. (*)

In cases where over-buying was effected by a change in the operating policy of an exhibitor's theatre, the difficult problem was to determine the intention. An exhibitor could contend that a change in policy was necessary to meet competition. Cases were adjudged under the Code according to surrounding circumstances. A change from single features to double features was closely scrutinized. However, such a change in a territory where double features predominated might not be considered unreasonable. Considerable latitude in judging intent was afforded an exhibitor who showed a deficit record. Discussions held by an exhibitor before changing his operating policy often indicated his purpose.

Another device used to disguise over-buying involved "the execution without just cause of an agreement from any distributor as a condition for entering into a contract for motion pictures that such distributor refrain from licensing its motion pictures to the complaining exhibitor." (**) Here again, the question of intent arose. The mere fact that an exhibitor was unable to buy film was not considered to be proof. It was essential to show conspiracy between the distributor and the respondent exhibitor. No such proof was adduced during the life of the code. Such a practice, if proven, would have undoubtedly constituted a conspiracy in restraint of trade and entailed serious consequences both to the distributor and to the exhibitor involved.

The opening of a new theatre with or without circuit affiliations might cause a withdrawal of product from an existing theatre. A new theatre in a competitive territory might find itself unable to buy product in competition with existing theatres. Cases of this type, where no theatre was overbought or where no theatre had adopted an unfair competing policy, were dismissed by the Code Authority on the gound that mere inability to buy did not constitute proof of conspiracy; if the theatre involved could "out-buy," that fact did not necessarily mean that the theatre had in fact over-bought. (***)

Several cases arose under this same provision where distributors refused to sell subsequent runs in small towns. The Code Authority held that this was not proof of conspiracy between exhibitors and distributors but was entirely a problem of sales policy within the distributor's individual judgment.(****)

(*) Code Authority Appeal Decision No. 23.

(**) Article VI, Part 2, Section 1 (c) of the approved Code.

(***) Code Authority Appeal Decisions No. 54, No. 247 and No. 428.

(****) Code Authority Appeal Decisions No. 244, No. 333 and No. 334.

Another practice which might have been employed as an overbuying device was the "exclusive rights" contract, whereby an exhibitor contracts for the exclusive right to exhibit a distributor's product in a particular competitive area. No case of this type was brought, however, to the attention of the Code Authority.

In order to be certain that no possible means of over-buying had been omitted from the Code the Code framers inserted a "catch-all" clause which forbade the commission of any other act with a similar intent and effect. (*) The most common device complained of under this section was the use of "selective" contracts. A selective contract allows an exhibitor a choice from a group of pictures offered for which he usually pays a higher pro rata price than if the whole group were taken. For instance he may contract for a selection of a minimum of 20 from a block of 30. The pictures are not selected at the time the contract is drawn up but as the pictures become available. This device has the effect of preventing a competing exhibitor from contracting for the remaining pictures at the beginning of the season. In general, the Code Authority ruled that the minimum number of pictures stipulated in a selective contract should be considered in making decisions. (**)

However, to prevent the use of selective contracts as an over-buying device the Code Authority in a number of cases ordered the respondent to make his selections promptly and within a certain time after availability was announced so that the complainant might then be free to contract for surplus pictures. (***)

Where an exhibitor has contracted for sufficient pictures to satisfy normal demands the practice of spot booking may be used as an over-buying device. "Spot booking" refers to the practice of purchasing individual pictures for immediate use as they become available. Special feature products are usually released by this method although the practice is not confined to this type of picture. In two cases, the Code Authority advised the respondents that "extreme care must be observed that the practice of 'spot booking' pictures shall not be conducted in such a manner that a violation of Article VI, Part 2, Section 1 (c) may be charged and proved." (****)

In decisions on appeals a number of general rules to be considered in all cases was indicated by the Code Authority. In considering whether an exhibitor had over-bought, the Code Authority ruled that regardless of the age of the pictures, it would consider both the number of pictures purchased under an old contract and the number of pictures under a new contract; the entire number of pictures regardless of quality was to be considered. (*****)

(*) Article VI, Part 2, Section 1 (d) of the approved Code.

(**) Code Authority Appeal Decision No. 23.

(***) Code Authority Appeal Decisions No. 326, No. 347 and No. 368.

(****) Code Authority Appeal Decisions No. 123 and No. 231.

(*****) Code Authority Appeal Decision No. 53.

Neither was any distinction made as to whether the picture under contract were first, second or subsequent run. The entire product under contract regardless of run was considered in making decisions. (*)

The Code Authority refused to consider cases where an exhibitor was unable to secure the particular run of picture that he desired, taking the position that this was entirely a subject for negotiation between the distributor and the exhibitor. (**)

4. METHODS OF GRANTING RELIEF

How to grant relief and how to select the pictures to be surrendered by the guilty party at first presented difficult problems to the local Grievance Boards.

The pictures to be surrendered were named in the first decisions handed down. However, beginning with the thirteenth appeal decision by the Code Authority on June 13, 1934, (which happened to be the fourth appeal relating to over-buying) the exhibitor held to be in violation was required to prepare two lists of features each consisting of the number over-bought and the complainant was permitted to make his choice of either group. This method prevented the respondent exhibitor from releasing only such pictures as he judged to have the least box office appeal.

In later decisions, further to protect the complaining exhibitor from having to make a choice between two lists possibly both composed chiefly of independent product, the Code Authority stipulated that the lists should be made up so as to be representative of the product of all distributors involved as far as possible. (***) The number of pictures awarded to a complaining exhibitor was not to be reduced because a respondent exhibitor continued an unfair operating policy thus creating an actual shortage of pictures. (****)

While the Code Authority had to evolve its own methods of procedure in granting relief, the Code did state that in making the award the "terms and conditions shall in no event be less favorable to the Distributor concerned than those contained in the license contract of the Exhibitor complained of, including the Distributor's loss of revenue, if any, resulting from the elimination of or reduction of revenue from any subsequent run or runs made necessary by such award." (*****) This stipulation was entered since it was the assumption that the distributor was an innocent party to the agreement, and therefore any interference with his contractual relations should carry the assurance that he would not be financially injured.

(*) Code Authority Appeal Decisions No. 17, No. 20, No. 73, No. 108 and No. 117.

(**) Code Authority Appeal Decisions No. 121, No. 283 and No. 284.

(***) Code Authority Appeal Decisions No. 53, No. 73, No. 58, No. 307 and No. 395.

(****) Code Authority Appeal Decision No. 401.

(*****) Article VI, Part 2, Section 5 of the approved Code.

Such adjustments as became necessary under this clause were relatively simple in the case of contracts calling for flat rentals. Percentage agreements presented difficulties. The Code Authority did not specify the "terms and conditions" in these cases but allowed the parties involved to arrive at a solution by mutual agreement. In cases where the distributor questioned the financial responsibility of the complaining exhibitor, the local Grievance Boards or the Code Authority usually required as a condition to the award a bond or cash deposit.

It is to be noted that the Code could not interfere with contractual relations existing between a distributor and its affiliated theatre. (*)

5. SUMMARY OF CASES CONSIDERED

The local Grievance Boards reported 164 over-buying cases considered in the period up to April 1, 1935. No analysis showing the amount of relief granted in these cases is available.

The National Recovery Administration has on record the Code Authority appeal decisions on 63 cases which were appealed to the Code Authority. An analysis of these cases indicates that in nine (9) cases, the local board decision in favor of the complainant was affirmed and in eight (8) cases reversed. In fourteen (14) cases, the local Grievance Board decision for the respondent was affirmed and in seven (7) reversed. Eighteen cases were dismissed by the Code Authority, three (3) were remanded for further hearing, and in four (4) cases relief in part was granted the complainant. This part relief consisted in general of requiring that the respondent make selections of pictures within a definite time limit under selective contracts. Omitting those cases in which part relief was granted, the record shows that the complainant was granted relief in 28.6 per cent of the overbuying cases considered by the Code Authority.

6. THE PUBLIC STAKE IN OVER-BUYING

Any relief from over-buying is necessarily granted to the smaller exhibitor. The financially powerful affiliated or circuit exhibitor needs little protection. His economic strength is his safeguard.

Overbuying is least often encountered where there are many competitive theatres in a territory. In such a case overbuying is likely to prove too expensive. Moreover, the returns seldom warrant it. Where the market is large enough to accomodate a number of theatres, it is also usually large enough to sustain several showings of a film. In such cases, an exhibitor unable to secure desirable first or second runs may lower his admission prices and step into a subsequent run position.

It is in the competitive territory so small as to be able to sustain two or three theatres only that the more predatory aspects of over-buying reveal themselves. The intent and effect is first to stifle and eventually to eliminate competition. A profitable establishment may be driven out of business with consequent unemployment and economic loss to the community.

(*) Article VI, Part 2, Section 5 of the approved Code.

The public has not only an economic but a family-circle concern in the result of over-buying. When a local theatre establishes a monopoly for itself by this scheme, three conditions enter the family circle. One touches the family pocketbook whenever monopoly exercises its privilege of raising admission prices. The second condition restricts the family's choice of pictures it wants to see and enjoy. With the rival theatre or theatres closed, there is but one place to go; if the picture featured there does not appeal, one family after another seeks other entertainment. That cuts down motion picture revenue. But the offending theatre may seek to check this loss with a new program policy; and, there, the third condition enters to interfere with family's plans for the week. The theatre now attempts to play more shows; probably offering double bills; often changing pictures every second or third day. Opportunity to see the most popular pictures on days convenient to the family is thus sharply limited - in many cases, lost altogether for in small towns, it is seldom that feature pictures play a second engagement.

Just as the business community and the public lose by the practice, in the long run, so do distributors. Whereas distributors may receive increased returns during the first part of the process, once competition has been removed, the premiums cease. The exhibitor in a non-competitive situation is in an excellent position to deal shrewdly with the distributor.

The exhibitor suffering from the practice has no recourse even to the Courts unless, as is very unlikely, he can prove concerted action in contravention of anti-trust statutes. The public is helpless. The individual distributor cannot single-handedly combat the practice to the detriment of his business. Distributors acting in concert would be liable to prosecution under anti-trust laws. Apparently only through some such Federal assistance to industry in general as was extended by the National Industrial Recovery Act, or through particular legislation for the Motion Picture Industry does there seem to be a way to eliminate the harmful practice of over-buying.

B. CLEARANCE AND ZONING

1. DESCRIPTION

A "zone" is a territory within which theatres compete for patronage.

"Clearance" is that period of time which, by contract between a distributor and the exhibitor concerned, elapses between the prior showing and any subsequent showing of a feature picture within a zone.

"Run" refers to the sequence of different showings of a feature picture in a zone. To illustrate, a first showing is referred to as a first run; a second showing as a second run, etc.

Early in the history of the Industry, distributors found that attempts to release a picture for simultaneous exhibition at a number of theatres in a competitive area resulted in reduced film rentals and destroyed the market for subsequent exhibition in the territory. Moreover, the large number of positive prints required for widespread simultaneous exhibition - prints that thereafter were of limited use -

added considerably to a distributor's costs and increased expenses beyond commensurate return. Because of these facts, a system of clearance developed.

The first-run exhibitor pays a premium in the form of a high license and rental fee for the prior use of a print. He maintains a relatively high admission price. Many theatre goers are willing to pay this price rather than wait a number of weeks or months to view the picture in a second-run house. The greater the period of clearance, the greater is the number of customers the exhibitor is likely to attract. Naturally, the amount of clearance that an exhibitor is able to secure is an important factor in the amount he is willing to pay for the use of a film.

This same situation is duplicated in the case of second-run and subsequent run exhibitors, except that in these instances the license and rental fees paid are smaller and the clearance period shorter.

An excellent example of the effect of clearance on admission prices is seen in the current (October - November, 1935) marketing of the Warner Brothers feature, "A Midsummer Night's Dream". This is being exhibited as a "road show" attraction at high admission prices. One year, it has been publicly announced, is the clearance period. It is largely on the strength of the unusually long clearance period that the high scale of admission prices is maintained.

If the period of clearance is too short, the prior-run exhibitor does not receive full value for the money he has expended in higher film rentals and in maintaining a large and well-equipped theatre. On the other hand, if the period of clearance is unduly long, the subsequent run exhibitor suffers. The advertising and exploitation of the picture which may have aroused much enthusiasm in connection with the first-run exhibition tends to fade from the public mind and when that happens there are empty seats in the theatre.

The best interests of the distributor would appear to lie somewhere in between. The distributor receives the major part of his income from prior-run accounts, but the income from subsequent run accounts is also essential to him. Moreover, it is important that he receive all of the revenue as soon as possible. He is best served when clearance is fair to both groups, in which case he is in a position to receive maximum income and prompt return on his investment.

2. PREVIOUS ATTEMPTS TO REGULATE CLEARANCE

The application of the clearance system throughout the Industry led to constant bickering between subsequent run exhibitors anxious to improve their position and first-run exhibitors attempting to maintain their advantages in clearance. Distributors were pressed from both sides and received the blame for any alleged inequities.

To solve these problems, the Hays Organization through the Film Boards of Trade attempted to formulate clearance schedules in each of the 32 distribution districts then existing. Producer-distributor and exhibitor committees drew up schedules which were designed to be fair and reasonable. However, complaints of unfairness were made by independent

exhibitors who charged that they had been discriminated against in favor of affiliated and unaffiliated circuit theatres.

An independent Nebraska exhibitor, William N. Youngclaus, took his troubles to the United States District Court. In the trial of the suit Youngclaus v. Omaha Film Board of Trade, Judge Munger handed down an opinion on July 2, 1932, enjoining the enforcement of the schedule in the Omaha territory, holding that it was an unreasonable restraint of trade and in contravention of anti-trust laws. Attempts to formulate schedules were abandoned after this decision.

3. THE FORMATION OF CLEARANCE AND ZONING BOARDS

The principle of reasonable schedules of clearance and zoning to be applicable to all exhibitors was again brought to the fore by the Code of Fair Competition for the Motion Picture Industry. The function of drawing up these schedules was to be delegated to local Clearance and Zoning Boards to be established in each exchange center. All groups agreed to this proposal in principle, but disagreed on the question of division of membership on the local boards.

The Exhibitors' committee proposed that the local boards should consist of four subsequent run theatre representatives, two first-run theatre representatives, and two representatives of distributors, on the assumption that the interests of first-run exhibitors and distributors coincided in keeping clearance as long as possible (*).

Affiliated exhibitors and distributors would not consent to such a proposal. They stated that many subsequent run exhibitors favored eliminating clearance entirely and that such a result would destroy the huge investment in the more elaborate first-run houses, cripple the distributor's revenue, and eventually throw the entire industry into a chaotic and bankrupt state (**). The representation proposed would have given the subsequent run exhibitor a tie vote to start with, and it was pointed out that the independent distributor's interest might well be considered to lie with those of subsequent run exhibitors - his principal market - and against affiliated theatres and distributors (***).

In pre-code conferences independent exhibitors asserted that where they were in competition with affiliated exhibitors they were constantly discriminated against in questions of clearance and zoning, and they feared that under the motion picture code their positions might still further be subordinated. The actual operation of the code provisions was such that this group received the major benefit.

(*) Article 41 of Code Proposals submitted by the Exhibitors' Committee, August 23, 1933. Volume A for the Motion Picture Industry, National Recovery Administration Files.

(**) (***) Memorandum in Explanation and Support of the Provisions of the Proposed Code of Fair Competition for the Motion Picture Industry (the producer-distributor proposals). Not signed - not dated. Pages 22-27. National Recovery Administration Files.

The Clearance and Zoning Boards as finally constituted in the code consisted of two representatives of distributors, one with theatre connections and one with no theatre connections, two representatives of first-run exhibitors, one affiliated and one unaffiliated, and two representatives of subsequent run independent exhibitors. This division of representation embodied practically all the producer-distributor proposals. Subsequent run exhibitors claimed that the majority of votes would be split four to two against them. However, according to a report submitted to the Senate Finance Committee during investigation of the National Recovery Administration it was shown that this vote very seldom occurred. Of all cases heard 78 per cent were decided by unanimous vote (*).

4. SCHEDULES UNDER THE CODE

The local Clearance and Zoning Boards were permitted by the Code to formulate schedules of clearance and zoning for their respective exchange territories by January 1 of each year, such schedules to be in force throughout the ensuing selling season (**). Various difficulties were experienced by the local Boards. To make sure that schedules submitted would be reasonable and not hastily formulated, delays in submission were authorized. This has been discussed previously in Chapter III.

The greatest difficulty experienced in attempting to formulate schedules appears to have been disagreement as to what principles were to be used in determining what was fair and reasonable. Most of the schedules submitted by the local Boards took into consideration every conceivable factor that might affect clearance including runs, admission prices, double feature policies, vaudeville, premiums, and lotteries. To add to the confusion, local customs differed so radically that standardization was most difficult.

In the meantime no affirmative relief could be awarded the victim of unfair clearance or zoning since the Code specified that such complaints were to be heard only after the approval of a schedule. Since the schedules were unavoidedly delayed, the Code Authority proposed an amendment to the Code to permit the local Clearance and Zoning Boards to hear complaints against alleged inequities in individual cases without regard to whether a schedule had been approved or not. This amendment was approved by the National Recovery Administration and became effective July 3, 1934 (***).

(*) Reports of Compliance and Enforcement Director's Office - Motion Picture Industry - National Recovery Administration Files.

(**) Article VI, Part 3, Section 3 of the approved Code.

(***) Amendment No. 1 to the Code of Fair Competition for the Motion Picture Industry.

Local Boards continued to differ on the principles to be considered in formulating schedules or in granting relief in individual cases. Finally the Code Authority released a set of rules for the guidance of local Boards (*). The more important of these rules recommended that:

1. An exhibitor be not prohibited from seeking to improve his position by buying any run he might be able to secure by negotiating with the distributor.

2. The difference between admission prices charged be considered in allotting clearance.

3. A clearance schedule already approved be revised where a prior-run reduces admission prices.

4. The period of clearance be not affected by reason of any theatre using a double feature policy or a stage show.

5. The waiver of a first run of clearance over a second run should automatically advance the clearance of subsequent runs.

6. The period of clearance fixed in any case should be a maximum and that should not be considered as preventing any exhibitor from negotiating for a shorter clearance with a distributor if he is able to do so.

Only two clearance and zoning schedules were approved by the Code Authority in 1934. These were for Miami, Florida and St. Petersburg, Florida. These schedules were purely geographical and extremely simple.

Only one major schedule was approved by the Code Authority - and that in 1935 - for the Los Angeles territory. About five months time had been spent by the local Board in drafting this schedule. When it was submitted to the Code Authority, complaints were so numerous that the Code Authority spent 4½ days holding preliminary hearings with witnesses from Los Angeles. After consideration of the schedule, some ten or twelve days were spent in continuing re-hearings again with witnesses present from Los Angeles. Altogether the schedule was in the hands of the Code Authority about four months. Protests from Fox West Coast Theatres, Inc. were outstanding at the time of approval. Because of this a provision was inserted in the approval requiring that the local Board hear these protests immediately and certify their findings to the Code Authority.

This Los Angeles schedule, while not perfect, was a considerable improvement over previous conditions. At the time of its formulation, a price-war was raging in the territory. One of the factors considered in determining clearance under the schedule was admission prices. Rather than suffer changes in clearance, exhibitors terminated the price war.

(*) Code Authority Release of September 13, 1934 - "Principles of Clearance" - National Recovery Administration Files - Motion Picture Industry - Clearance and Zoning Schedules

5. THE ADJUSTMENT OF COMPLAINTS

During the period of the Code, 875 individual complaints were heard by the various local Clearance and Zoning Boards according to a report made by the Code Authority as of June 16, 1935. No analysis of relief afforded in these cases is available.

According to this same report, appeals were made to the Code Authority in 136 cases, or 15.5 per cent of the cases considered. The Motion Picture Files of the National Recovery Administration contain records of 96 of the decisions on appeal cases. An analysis of these 96 cases shows that the Code Authority affirmed 28 cases and reversed 10 cases where decisions for complainants had been made by local Boards. Local Boards' decisions for respondents were affirmed by the Code Authority in 30 cases and reversed in six cases. Thirteen cases were dismissed, four were remanded for further hearing, and in five cases relief in part was granted.

Omitting cases remanded for further hearings and those in which only relief in part was afforded, it is seen that the Code Authority granted the complainant relief in 39 per cent of the appeal cases considered.

6. DISCUSSION

The subsequent run exhibitor bears the principal burden of unfair clearance. It is claimed that 40 per cent of distributors' revenue is derived from first run accounts in 100 key cities (*). All the major film-producing companies consider at least 50 per cent of the cost of a negative film should be amortized within three months after release for exhibition. The Paramount Pictures Corporation amortizes 80 per cent of the cost of a negative film in 12 weeks (**). It is obvious that a distributor's prior-run accounts are his largest individual sources of revenue. For this reason, a prior-run exhibitor is in a better position to demand increased clearance than is a subsequent run exhibitor to resist this incursion. If a controversy as to fair clearance arises, a distributor is least likely to risk alienating his larger account.

For parallel causes, unfair zoning restrictions are usually at the expense of the subsequent run exhibitor. In some cases large theatres have been able to exact as much as six months clearance and zoning restrictions of more than 100 miles.

(*) "The Motion Picture Industry" by Howard T. Lewis of Harvard University. Page 201. Publisher, van Nostrand, 1933.

(**) Pg. TH - 47, "Standard Trade and Securities". Published by Standard Statistics Co., N.Y.C., issue of February 20, 1935.

The principal effect of unduly extended clearance is to reduce the revenue of the subsequent run exhibitor. By the time this exhibitor is able to use a film, the advertising and exploitation in connection with earlier exhibition has faded from public memory in his locality. His public is now besieged on every side by new advertising and exploitation campaigns promoting newer and fresher pictures. The attractions of the subsequent run exhibitor are now out-of-date.

Prior-run exhibitors conceive it to their best interest to have clearance as lengthy and zoning as extensive as possible. Undoubtedly, the more rigid these restrictions, the more tickets such exhibitor would sell. However, if carried to extremes, this practice would force the subsequent run exhibitor either out of business or into such a subordinate position that he would be unable to pay any significant proportion of the film rental totals. The loss to distributors through the collapse of these accounts would be transferred to prior-run exhibitors in the form of increased charges for film. It is doubtful, if even with increased attendance, the prior-run exhibitors could shoulder this burden.

On the other hand, the maintenance of palatial, architecturally attractive prior-run theatres depends upon adequate clearance and zoning. Theatres of this type employ many people, and in some cases engage in vaudeville or elaborate stage presentation activities which in turn provide still more employment. To finance these activities, these theatres charge high admission prices. They pay high film rentals. Unduly short clearance or unduly restricted zoning would undoubtedly result, as far as these theatres are concerned, in loss of investment, loss of revenue to distributors, and an increase in unemployment.

The distributor is helped by fair clearance. He is then in a position to receive maximum total revenue by charging fair film rentals to both prior and subsequent run exhibitors. Subordination of either group results in a loss of competition essential to the distributor if his income is to be protected. In addition to his concern in protecting both prior and subsequent runs, the distributor has a further interest in shortened clearance. It is essential for him to obtain the quickest possible return on his investment in films. This is only possible where clearance and zoning are reduced to an equitable minimum.

Where clearance is unduly extended, that part of the public which is unable or unwilling to pay the high admission prices asked by the deluxe or prior-run house is forced to wait an unreasonable period for an opportunity to see a popular feature picture. The same argument applies to unfair zoning restrictions. The consumer's interest is in keeping both clearance and zoning at a minimum.

Although since the Youngclaus decision, and since the Code of Fair Competition for the Motion Picture Industry became inoperative, the formulation of clearance schedules has been invalidated, it is nevertheless a matter of practice and of fact that plans which parallel or are similar to schedules are in effect in every distributor's office in each exchange territory. Such a system is essential to the distributors, but it leaves them in a vulnerable position. If the plans of two

or more distributors are similar or coincide, they leave themselves open to charges of conspiracy.

Under the Code system of the National Recovery Administration distributors and exhibitors were allowed to get together and agree on joint fair schedules. Under existing conditions, this is impossible.

It would seem to be to the best interests of all parties concerned to provide some means for the Motion Picture Industry itself to solve clearance and zoning difficulties. Federal supervision would provide suitable safeguards for the interests of minority groups and for the consuming public.

C. BLOCK BOOKING AND THE CANCELLATION PRIVILEGE

1. FILM MARKETING METHODS

In carrying out the routine method of selling films, the distributor circulates elaborate advertising material describing forthcoming productions to exhibitors. This "pressbook" or advertising portfolio usually contains the names of famous stars, directors and authors or various combinations of such talent and synopses of pictures of features in which it is proposed to use this talent. Advertising copy in trade journals points out records of past productions and announces the pictures for the forthcoming season. Dozens of motion picture weeklies and monthlies - the "fan" magazines - describe coming attractions. Advertising in magazines of national circulation supplements the campaign.

The advertising and exploitation campaign creates a demand for certain pictures - a demand which the exhibitor is made aware of by his "movie fans." The exhibitor quite naturally seeks to satisfy his patrons by attempting to license the pictures they desire to see. However, the distributor will usually charge an exorbitant price for any individual film unless the exhibitor agrees to purchase a substantial proportion of the entire group of feature pictures offered for sale. The distributor may offer the exhibitor a selection of a small group of pictures, but in this instance the price per picture is proportionately higher than if a larger group or the entire group is licensed. These so-called "selective contracts" may call for a minimum and maximum. For instance, an exhibitor may contract for a minimum of twenty pictures with the privilege of taking any number up to a maximum of thirty.

Regardless of the number of pictures specified these contracts are drawn up during the selling season which is the spring and summer of the year and before production on the majority of these pictures has in the usual case been started. Deliveries begin in the fall as pictures become available for release.

Various causes may result in gaps in an exhibitor's program and require the purchase of a single picture to fill an immediate need. This practice is known to the trade as "spot booking."

The first recorded case of block booking appears to have occurred in 1916 when Adolph Zukor announced that Paramount's new selling policy

would require the purchase of a whole program in order to obtain Mary Pickford pictures(*). This selling policy soon became general throughout the Industry.

2. DESCRIPTION OF BLOCK BOOKING

In brief, block booking, as practiced in the Motion Picture Industry, relates to the sale of pictures in groups usually varying in number from ten to forty and in many cases the distributor's entire line. The aggregate price for an entire group of pictures in generally lower per picture than in instances where a smaller group is selected, or the pictures are contracts for individually. In areas where several exhibitors are in keen competition, distributors usually refuse to sell any pictures of a group separately until all efforts to dispose of these pictures in blocks have failed. In areas where no competition exists, the exhibitor is in a satisfactory bargaining position and can almost dictate his own terms.

3. THE POSITION OF VARIOUS GROUPS ON THE BLOCK BOOKING QUESTION

(a) Exhibitors.

The practice of block booking is attacked by exhibitors on the grounds that:

(i) It forces him to license and pay for inferior films or films unsuited to his normal audience.

(ii) It assures the producer of revenue on all films regardless of quality, thus removing one of the incentives toward production of better pictures.

(iii) It fills his playing time with the product of a few distributors, preventing him from contracting for desirable films of other distributors.

(iv) It forces him to contract for more pictures than he could reasonably use in order to obtain sufficient films of the better class.

Affiliated theatres express the opinions of the producers and distributors who control these theatres and are in favor of the practice.

In general, independent exhibitors oppose block booking. They maintain that if producer-distributors were compelled to sell each picture on its own merits, a theatre owner would select only such pictures as his patrons requested and desired. Doubtless producers would suffer losses from unpopular pictures, but these losses would be no greater than those suffered by manufacturers in other lines of business who made inferior goods, and would be compensated for by increased profits on popular films. Under this system the most capable producers would

(*) "A Million and One Nights" by Terry Ramsaye. Page 731, Vol. II. Publisher, Simon & Schuster, 1926

survive and new competition would be free to enter the production field.

The following testimony before the Federal Trade Commission indicates the attitude of the larger exhibitors:

> "The Examiner's Findings show the testimony of exhibitors in different parts of the country who were forced by the respondents to take all of a block or blocks or none and their many objections to this practice. In addition to this evidence we desire to call the attention of the Commission also to the resolution passed by the New York Theatre Owners' Chamber of Commerce on August 2, 1923 (Comm. Ex. 344,345; R. P. 6590-94). This is an exhibitor organization with a membership which represents 500 of the leading theatres in metropolitan New York. These resolutions were submitted to the entire membership two weeks prior to this meeting, in order that all might have ample opportunity to consider and discuss them.
>
> "The resolutions severely condemned the practice of block booking and were passed unanimously. This action by such a representative body of exhibitors is indicative of the attitude of the exhibitors throughout the industry.
>
> "Probably the best known exhibitor in the United States in recent years is Samuel L. Rothafel, better known to his millions of radio acquaintances as 'Roxy.' He was for years manager of the Capitol Theatre in New York, one of the largest and finest houses in the United States. In his testimony (pp. 721-2) he points out the evils of this system--how it compels the exhibitor to take the bad pictures in order to get the good ones. He is unalterably opposed to the system. His testimony is convincing because in the management of his theatre he has been forced, against his will, to take all the pictures of the Goldwyn Pictures Corporation, which owns an interest in the theatre, and he therefore speaks from experience.
>
> "It naturally follows that this practice affects the public because, when the exhibitors are forced to take any inferior product, the theatregoing public is forced to pay its money to see poor pictures."(*)

Many exhibitors have agreed that the licensing of pictures in a block as a wholesaling procedure is a desirable practice provided that no compulsion is used to exact purchases of entire groups and thus limit the right of selection.

The Universal Pictures Corporation inaugurated a complete service plan in 1924. While it was a form of block booking it had a limited popularity with small town exhibitors. The plan called for a weekly payment, sometimes as low as $9, for releases which provided a complete

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(*) Brief for the Commission, Part II, Page 165. Federal Trade Commission v. Famous Players-Lasky Corporation, Federal Trade Commission, Docket 835.

show including feature and shorts. This film service, later adopted by other companies, supplied motion picture entertainment in small towns having as few as 100 or 200 inhabitants. In most cases shows were limited to one or two a week.

(b) Independent Producers and Distributors

The following testimony of Mary Pickford before the Federal Trade Commission during the Commission's investigation of the Famous Players-Lasky Corporation indicates the effects of the block booking practice upon producers and distributors who control an insufficient number of theatre outlets:

"A. In certain places in the United States we have realized great difficulty in selling our pictures.
Q. What difficulty did you have that interfered with the sale of the pictures?
A. Well, the theatres had purchased the year's output, for one reason. They had their 52 pictures, or whatever pictures they needed, that they had bought in the block, and they had no room for our productions. And another was that they would not pay (our prices) and we could not accept the prices they offered us.
Q. Did you find that you experienced any difficulty by reason of certain producers owning theatres?
A. Yes, we did.
Q. To what extent did the block booking and the ownership of theatres by producers interfere with the market for your pictures?
A. Well, in certain sections . . . we were forced to go in cheap houses on side streets instead of the picture theatres, thereby losing money." (*)

(c) Affiliated Producers and Distributors

This group defends the block booking practice on the grounds that:

(i) It is merely the application of the principles of wholesaling.

(ii) It reduces the cost of distribution, thereby benefiting the exhibitor.

(iii) It simplified the exhibitor's buying problem.

(iv) An assured income tends to encourage consistent quality productions.

(v) It is the most successful method of distribution yet devised.

(*) Reprinted from "The Motion Picture Industry" - Howard T. Lewis of Harvard University. Page 264. Publisher, Van Nostrand, 1933.

(d) Religious and Other Groups Interested in the Social and Moral Welfare of the Public

These groups oppose the practice of block booking on the ground that the practice interferes with local censorship activities. When approached by representatives of these organizations with regard to the showing of a feature deemed unsuitable, the exhibitor disclaims all responsibility. He contends that he must contract for such pictures even as a condition to contracting for any pictures, and that failure to exhibit a picture that might be classed as salacious would involve damage to his business and a possible breach-of-contract action.

4. PREVIOUS ATTEMPTS TO COPE WITH THE PROBLEM

In 1922 the Federal Trade Commission instituted proceedings against Famous Players-Lasky Corporation and, after five years spent in holding hearings and gathering testimony, decided that block booking was an unfair and improper practice and issued a "cease and desist" order (*). However, when the issue was presented to the United States Circuit Court of Appeals for the Second District, this ruling was reversed in a decision handed down on April 4, 1932. (**)

In the meantime, trade practice hearings had been held in October, 1927, with Federal Trade Commissioner Abram F. Myers presiding. Block booking was one of the subjects discussed, but no solution to the problem was reached.

In commenting on conditions after this trade practice conference, one of the leading disinterested authorities on the Industry stated:

> "At the present moment, block booking is still the common practice of the motion picture industry. It is probably true that there is more open selling than there was. Doubtless this is the result of a number of factors among which the threat of governmental action is probably one. However, the fact remains that block booking still exists." (***)

The trade practice hearings under the auspices of the Federal Trade Commission broke up finally with little benefit to any concerned. Such concessions as had been made by the parties to the conference were soon lost through the inability of the Federal Trade Commission to enforce its rulings.

Between 1927 and 1933, a number of meetings were held at which representatives of distributors and exhibitors attempted to arrive at a standard contract. A clause known as the "5-5-5 clause" was suggested and was finally incorporated in these proposed standard contracts. This clause permitted an exhibitor to cancel 15 per cent of all pictures bought

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(*) Federal Trade Commission, Docket No. 835. July 9, 1927.
(**) Federal Trade Commission v. Paramount Famous-Lasky Corp., Adolph Zukor, and Jesse L. Lasky.
(***) "The Motion Picture Industry" - Howard T. Lewis of Harvard University. Page 178. Publisher, Van Nostrand, 1933.

in block, provided that he paid for half of those cancelled and provided, further, that he was not in default of any existing contract; and that the average license and rental fee for the pictures under contract was less than $400. This clause was never widely adopted.

Bills have been introduced in practically every Congress since the Federal Trade Commission's investigation of the Famous Players-Lasky Corporation brought the problem to the attention of the public. The most recent of these anti-block booking bills was sponsored by Representative Samuel B. Pettingill of Indiana (*). The bill receiving the most attention was probably that introduced by Senator Smith W. Brookhart of Iowa in 1928 (**). This bill progressed to the stage of hearings before the Senate Committee on Interstate Commerce. These hearings lasted five days. Practically all controversial distributor-exhibitor problems were then discussed.

5. GOVERNMENTAL REGULATION IN ENGLAND

It is interesting to note that in England the Cinematograph Films Act of 1927 (***) restricted the practice of block booking. Part I of the Act contains the following sections:

1. Restrictions on blind booking of films.
2. Restrictions on advance booking.
3. Penalty on contravention.
4. Provisions as to existing agreements.

Charles C. Pettijohn, general counsel for the Motion Picture Producers and Distributors of America, asserted at the Senate Hearing that this Act was directed towards restricting the importation of American films.

6. PRE-CODE PROPOSALS

During the pre-code discussions, the various interested groups stated their positions very much as outlined previously in this section. It was obvious from the beginning that distributors would not agree to any code which eliminated block booking, and that exhibitors would not agree to any Code that ignored the question.

The Exhibitors' Committee proposed that the Optional Standard License Agreement of 1933 including the 5-5-5 cancellation clause be incorporated in the Code. However, exhibitor opinions throughout the country seemed to favor either complete elimination of block booking or a less restricted cancellation clause.

Ed Kuykendall, president of the Motion Picture Theatre Owners of America, proposed at the public hearings on the code that a straight 15 per cent cancellation privilege without payment for cancelled pictures of all films bought in a block be granted the exhibitor. In this connection he stated:

(*) H. R. 6472, 74th Congress, First Session.
(**) S. 1667, 70th Congress, First Session.
(***) A copy of this Act was introduced at the Senate Hearings on the Brookhart Bill (S. 1667, 70th Congress, First Session P. 150-160) by C. C. Pettijohn.

"We believe that this 15 per cent elimination clause will satisfy and meet with the actual requirements of every responsible and representative exhibitor, and that it will remove from further controversy, the question of block booking which during the past few years has developed into a political issue, both within and without the industry.

"We further believe that the 15 per cent elimination clause will not work a hardship or an injustice upon either the producer, distributor or exhibitor. We hereby recognize the commercial advantage to exhibitors in buying motion pictures in group for future delivery to insure a steady and dependable supply of suitable attractions for the continuous operation of their theatres. We are opposed to any requirement that motion pictures must be sold singly, separately and apart from each other." (*)

Abram F. Myers, representing the Allied States Association of Motion Picture Exhibitors, had submitted a proposal that compulsory block booking be declared an unfair trade practice, but in connection with the cancellation privilege stated:

"We suggested that if there was a disinclination on the part of the Administration to go into that subject in the code, we felt a 20 per cent elimination rate would at least serve the purposes for the time being until the forces of public opinion, which are out of our control but which are steadily rolling up against the practice of block booking, could get into action and perhaps regulate the matter for all time by necessary legislation." (*)

The position of affiliated distributors may be inferred from the following excerpt, taken from a printed memorandum of 66 pages (unsigned and not dated) prepared by producers-distributors in support of their own proposals for a "basic code":

"As for the Exhibitors' proposed Article 14 the standard form contract above referred to itself provides for a method of eliminating certain pictures, and the Distributors feel that such provision is purely a contract provision and that no code should require the seller of merchandise to permit the cancellation of any percentage of the merchandise sold or pictures licensed as in this case. It would be establishing a very dangerous principle to provide that the failure to give such cancellation right would constitute an unfair trade practice. On the contrary we believe it could be argued with much more force and effect that giving cancellation rights on pictures licensed is uneconomical and a dangerous principle. The Distributors feel that while they are willing to include the cancellation rights specified in the standard optional contract, that is as far as they should be required to go, since such contract was brought about by the Distributor and Exhibitor branches of the industry." (**)

(*) Transcript of Hearings on Proposed Code of Fair Competition for the Motion Picture Industry - Volume III, page 500. September 14, 1933.

(**) Memorandum in Explanation and Support of the Provisions of the Proposed Basic Code of Fair Competition for the Motion Picture Industry (the producer-distributor proposals). Not dated, not signed, page 49 - National Recovery Administration Files.

7. THE CANCELLATION CLAUSE

The provisions of the code represented a compromise between the conflicting interests. The exhibitor was granted the privilege of cancelling ten per cent without payment therefor of all pictures bought in block, subject to the following restrictions:

1. The exhibitor must have contracted for the entire block offered by the distributor.

2. The average license fees of all pictures in the contract must be not more than $250. The amount of the license fee, where percentage pictures were included in the contract, was computed largely from past performance.

3. The exhibitor must not be in default of his contract. Any subsequent default would make him liable for the amount of the pictures already cancelled.

4. The exhibitor must give the distributor notice of cancellation within 14 days after the general release date.

5. The exhibitor must have paid for nine pictures before he could cancel one. This procedure held for each subsequent group of ten, applying to the last group only if more than five pictures remained. The cancellation privilege was cumulative. (*)

The Optional Standard License Agreement of 1933 was made standard for the Industry with the provisions that any clause thereof that was inconsistent with the Approved Code was deemed to be amended to conform to the Code, and, that individual distributor's sales policy provisions might be inserted therein provided they were not inconsistent with other provisions. (**)

An interesting exchange of letters bearing on the block booking question took place about this time. Dr. A. Lawrence Lowell of Harvard University was offered but refused to accept an appointment as an Administration member on the Code Authority for the Motion Picture Industry. Dr. Lowell based his refusal largely on the fact that the code did not eliminate block booking. The following excerpts are of interests as showing the attitude of certain extra-industry groups on the block booking question as well as the attitude of the National Recovery Administration officials:

December 13, 1933

(To Sol A. Rosenblatt, Deputy Administrator, Amusements Division)

.....The five large producing companies have, by their business methods, obtained a controlling grip upon the business and are able to put forth upon the community any films that they please. This monopolistic practice, based on block booking and blind buying many

(*) Article V-F, Part 6 of the approved Code.
(**) Article V-F, Part 6 of the approved Code.

of us asked to have checked by the Motion Picture Code; but, instead of that, it has been given a certain legal sanction.....

A. Lawrence Lowell (*)

December 15, 1933

Dear Dr. Lowell:

.....The practices of block booking which you say are monopolistic have been specifically held not to be by a Federal Circuit Court of Appeals. We cannot impose through codes a surrender of the advantages vouchsafed by the Constitution under the copyright laws, and unless we can obtain agreement to such surrender in whole or in part, there is nothing to be done by us about it.

But this code does give exhibitors a right to cancel up to 10 per cent of the product which they have contracted for. It is the first time that such a concession has been made. In the opinion of practical men this will go far to remedy the evils complained of .....

Hugh S. Johnson, Administrator (**)

December 18, 1933

Dear General Johnson:

.....That the practice of block booking is a monopoly illegal at law, I do not mean to assert, but that the whole object of it is monopolistic I think one would hardly deny; and I am very much interested in your statement that you had no legal power to prohibit it in the code, because it would seem to follow that, no matter how much the representatives of the Government on the code authority should condemn it, there would be no legal power to stop it by any further amendment of the code.

The right of exhibitors to cancel 10 per cent of the product is, they tell me, futile; because it is perfectly easy for the producers to put in 10 per cent of films which the exhibitors are certain to reject before reaching the objectionable ones. Nor does this avoid the abuse of compelling them to take 90 per cent of an unknown block of films, including objectionable ones.....

A. Lawrence Lowell (***)

(*) (**) (***) The Record of Hearings before the Senate Finance Committee, Investigation of the National Recovery Administration pursuant to Senate Resolution 79, Part 5, p. 1290-1292.

December 29, 1933

Dear Dr. Lowell:

.....You say that your refusal is based on your statement that the block booking clause is monopolistic.

All that my remarks on the limit of my authority to stop block booking and blind buying meant was that I cannot repeal the copyright laws on which these practices are based, and which, under our constitution, were intended to create a monopoly for writers and authors.

But we did get a voluntary concession of a ten per cent cancellation clause. This whole procedure is experimental. I was able to negotiate this concession which I had no power to impose. I could not get more because I was unable to negotiate more. The question as to whether it will do the trick or not will not be answered by conjecture but by test - all I asked of you was that you conduct the test.....

Hugh S. Johnson, Administrator (*)

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8. SUMMARY OF COMPLAINTS UNDER THE CANCELLATION CLAUSE

A report submitted to the National Recovery Administration by the Code Authority (Motion Picture Industry Files) indicates that the local Grievance Boards had considered a total of fourteen cases involving the cancellation privilege in the period from their inception to April 1, 1935. No information on which to base an analysis of these complaints is available.

Information in the National Recovery Administration files indicates that only three cases involving the cancellation privilege were appealed to the Code Authority from decisions of local Grievance Boards. Four docket numbers appear, but this was the result of one case appearing under two docket numbers. On first appeal, the case was remanded to the local Board for further hearing and, apparently incorrectly, was assigned a new docket number on the second appeal.

Two of the appealed cases named the United Artists Corporation as respondent. It was the policy of this company to draw up a separate contract for each picture, regardless of the total number licensed. On this basis, it was contended that the cancellation clause could not apply. However, the exhibitors concerned testified that they were required to contract for all the pictures offered as a condition to contracting for any. The Code Authority held that this had the effect of making all the separate contracts a part of one transaction, and, therefore, ruled in favor of the exhibitors. (**)

(*) National Recovery Administration File - Motion Picture Industry - Code Authority - Administration Members.

(**) Code Authority Appeal Decisions No. 155 and No. 245, National Recovery Administration Files.

In the third case the Metro-Goldwyn-Mayer Distributing Corporation filed a complaint before the Charlotte Grievance Board against an exhibitor, asking that the exhibitor be required to supply preferred playing time to a percentage picture as specified in the license agreement. The exhibitor interposed as a defense that he desired to cancel the picture in question as provided in the code. The case was certified to the Code Authority and was dismissed by this body (*).

9. THE OPERATION OF THE CANCELLATION CLAUSE

Soon after the Code went into operation, the question arose as to whether the cancellation privilege applied to exhibition contracts executed before the effective date of the code. Division Administrator Sol A. Rosenblatt as Administration Member on the Code Authority stated it as his opinion that the cancellation privilege should be retroactive. This position was taken by the Code Authority (**).

No statistics as to the value of the cancellation privilege to exhibitors are available. Exhibitors in general do not appear to have been well satisfied with the operations of the cancellation clause.

The following is quoted from a letter to the executive secretary of the Code Authority from Nathan Yamins, a prominent member of the Allied States Association of Motion Picture Exhibitors and a representative of independent exhibitors on the Code Authority:

> "Article V, F. part 6, of the Code of Fair Competition gives to the exhibitor the privilege of excluding 10 per cent of the total number of motion pictures licensed without payment therefore, providing he has licensed all that has been offered, and providing that the average license fee is not in excess of $2,500.
>
> "This provision of the code was inserted for the express purpose of eliminating some of the alleged evils of block booking, in order to enable an exhibitor to dispense with the exhibition of a motion picture that he did not think was suited for his audience, and also to serve as a cushion to absorb the usual overbuying that an exhibitor is compelled to make because of the customary failure of distributors to release the number of pictures promised.

(*) Code Authority Appeal Decision No. 40, National Recovery Administration Files.

(**) Code Authority Resolution, March 29, 1934, National Recovery Administration Files.

"This provision is nothing new to the industry. It was contained in the standard uniform exhibition contract adopted by the industry in Chicago in 1928, and a similar provision was contained in the optional standard license agreement agreed to in the Atlantic City conference in 1930. In the latter agreement, the privilege to exclude was restricted to 5 per cent without payment, 5 per cent by paying one-half of the license fee, and an additional 5 per cent by paying in full, but securing extended playing time on features that the exhibitor did show.

"However, the exhibitor's privilege of excluding was permitted in all cases where the average license fee was not in excess of $400 so that it can readily be seen that the code gave the exhibitors nothing new that did not enjoy before, but on the contrary in the opinion of the undersigned, by reducing the average license fee requirement from $400 to $250, the code actually deprived many exhibitors of a privilege they formerly enjoyed.

"This privilege of exclusion has therefore been in the motion-picture industry at least since 1928. Distributors and exhibitors had experience with its workings from 1928 to 1930 when at the Atlantic City conference the 5-5-5 formula was agreed upon as a compromise to the demand of a straight 15 per cent cancellation privilege. From 1928 to 1930 percentage picture selling was in vogue in the industry, yet in the formulation of the 5-5-5 plan of cancellation, it was contemplated that the exhibitor could, if he desired, cancel a percentage picture, and it was recognized that it was optional with the exhibitor to cancel any picture he desired without restriction, providing the average license fee, including distributor's share of percentage pictures, did not exceed $400.

"The wording of the cancellation clause in that contract shows beyond shadow of a doubt, that the exhibitor could cancel a percentage picture, and in the actual operation of this clause, this was recognized as a matter of practice, and cancellation of percentage pictures was permitted, providing all requirements inserted for the protection of the distributor were compiled with.

"No one can dispute that the wording of the code provision permits the cancellation of percentage pictures. Subsection E provides, "If the rental of any motion picture excluded is to be compiled

in whole or in part upon a percentage of the receipts of the exhibitors theatre, the sum to be paid by the exhibitor as provided in paragraph (b) (5) hereof, shall be determined as follows:" Nowhere in the code is there any restriction as to the right of exclusion other than the requirements of part 6. It is clear, therefore, that it was the intent of all parties in the industry from 1928 to 1934 that the exhibitor should have an arbitrary unhampered right of 10 per cent exclusion, providing he met with all requirements stipulated and it is equally clear that the Code of Fair Competition intended to preserve this right to the exhibitor.

"How do the 1934-35 form of contracts offered by the distributors deal with this situation? They have all bodily grafted that provision of the code and inserted it into their contracts, and then inserted other clauses which nullify that provision of the code. Metro, Paramount, Universal, Columbia, Fox, expressly provide in substance that if an exhibitor has exercised his right of exclusion under the code, the distributor may arbitrarily rescind the allocation of the picture excluded and designate another picture to be exhibited under the terms applicable to the picture excluded. In all probability the same thing can be done under the R. K. O. and Warner contracts (United Artists has not been available for examination).

"In other words, if an exhibitor contracted for four out of 50 on percentage with a guarantee of $200, 16 at $100, 20 at $50, and 10 at $25, and if the exhibitor seeks to exclude picture X, a percentage picture, which he always could have done prior to the code, the distributor may arbitrarily move picture X into the last classification, and the exhibitor is relieved of playing a $25 picture, and now one of the other inferior pictures miraculously becomes worthy of securing preferred playing time on percentage.

"To my mind this is chiselling of the worst sort. It shows an indication on the part of the distributor that they never did and do not now want the code, that they seek to take advantage of the monopoly they enjoy to impose upon helpless exhibitors conditions and terms utterly unfair, but which the power of might gives them an opportunity to impose. It shows a lack of willingness to cooperate with the Government in the administration of the code and an utter disregard for everybody except themselves.

> "I submit without further argument that this provision of their contracts is illegal, because it violates the spirit and letter of express provisions of the code and because it is inconsistent with provisions of the optional standard agreement that the code has adopted. I request immediate action on the part of the distributors, withdrawing these provisions from their contracts, and urge them to do so to prevent an aroused exhibitor body from demanding that the code be opened for amendment to prevent such practices." (*)

In connection with the above, it must be pointed out that while the 5-5-5 cancellation clause mentioned in Mr. Yamin's letter had been formulated some years previous to the Code, it was not in general use. A disinterested authority on the Industry described the situation in the two years preceding the formulation of the Code as follows:

> "Throughout the 1931-32 and 1932-33 selling seasons, each distributor offered to the exhibitor a contract which in his opinion was as satisfactory as he could devise. There was, therefore, no uniformity of practice. Thus, seven of the leading companies gave the exhibitor no right to exclude any photoplay whatsoever, while two of them gave the exhibitor the right to exclude 10% of the pictures by paying 50% rental, provided that the exhibitor purchased all the pictures offered him." (**)

In a letter to United States Senator Pat Harrison, dated April 12, 1935, Division Administrator Sol A. Rosenblatt stated that the practice of inserting clauses tending to avoid conformity with the standard form of exhibition contract was before the Administration for consideration. Activities in this respect were halted by the Supreme Court decision of May 27, 1935.

Ed Kuykendall, president of the Motion Picture Theatre Owners of America, at the fifteenth annual convention of this group at New Orleans, February 25, 1935, also stated that the operation of the cancellation clause was unsatisfactory. (***)

(*) Quoted in full in Record of Hearings before Senate Finance Committee on Investigation of the National Recovery Administration. Seventy-fourth Congress, First Session, Pursuant to S. Res. 79. (pages 1284 & 1285.)

(**) "The Motion Picture Industry" by Howard T. Lewis of Harvard University, Publisher, Van Nostrand, 1933. Page 179.

(***) Motion Picture Daily, Issues of Feb. 26, Feb. 27, 1935.

10. DISCUSSION

Block booking is, if not the most complicated, at least the most controversial problem troubling the Motion Picture Industry. During eleven years, between 1921 and 1932, the Federal Trade Commission collected some 17,000 pages of testimony and 15,000 pages of exhibits with regard to the practice. In 1932, the Federal Trade Commission announced that the subject would be dropped.

The most common solution advanced by independent exhibitors is the complete abolition of compulsory block booking. It is proposed that it be declared a violation of statutory law whenever the price of an individual picture bears such a relation to the price of the same picture bought in a block as to act as an unreasonable restraint on the exhibitor's choice. Determination as to whether a price differential is unreasonable is to be left to either the Federal Trade Commission (*) or the Federal Courts. (**)

Without going into the merits of arguments, it may be pointed out that administration of such a law would probably require the services of Federal personnel exceeding the total number now employed by the Federal Trade Commission. Lack of adequate standards it may be assumed would result in conflicting determinations by different bodies. Moreover, the mills of the courts grind slowly. It would profit the exhibitor little or nothing to be involved in lengthy and expensive litigation.

The second most frequently advanced solution is extension of the cancellation privilege. It developed under the Code that practically all exhibitors considered the restricted ten per cent cancellation privilege inadequate. Increase of the percentage and removal of the restrictions on the free exercise of this right would probably satisfy most exhibitors' objections to block booking. This would allow the exhibitor to cancel inferior or unsuitable pictures and contract for quality productions if they appeared during the season.

The producer or distributor of productions of relatively high quality would have nothing to fear from such an arrangement. Since an exhibitor must either replace a cancelled picture with another or must extend the run of some more desirable feature, the elimination of unsuitable or inferior pictures would not involve any loss of playing time to the Industry as a whole.

(*) The Brookhart Bill - S. 1667, 70th Congress, First Session.

(**) The Pettingill Bill - H. R. 6472, 74th Congress, First Session.

D. FORCING OF SHORT SUBJECTS

1. DESCRIPTION OF PRACTICE

All the major companies produce short subjects in conjunction with the production of feature pictures. The practice of forcing the purchase of "short subjects" such as comedies, travelogs, and educational pictures of one or two reel lengths as a condition for the contracting of feature pictures has long been an established practice within the Industry. The practice originally developed from a demand for a varied entertainment program. Producers also found that the production of short subjects was a convenient method to train talent for feature pictures and to develop directors for the more responsible duties of feature production.

The practice of "forcing shorts" is similar in some ways to block booking. Many of the arguments relative to block booking of feature pictures apply equally to the forcing of short subjects.

2. PRE-CODE DISCUSSION

At the trade practices conferences held in 1927 under the auspices of the Federal Trade Commission, producers and distributors agreed that newsreels and short subjects would not be included in any block with features, and, further, that they would not require the lease of newsreels or short subject blocks as a condition of leasing feature blocks, or vice versa. Any benefits, however, that might have resulted were lost due to the lack of enforcement powers on the part of the Federal Trade Commission.

Independent exhibitors were practically unanimous in their desire to eliminate the forcing of shorts. It was claimed that distributors forced exhibitors to contract for greater numbers of short subjects than they could use; that exhibitors were required to date these shorts without regard to their suitability with a feature program, and that if the exhibitor could not date them or pay for them, his film supply was shut off (*).

The Exhibitors' Committee (**) proposed a Code provision declaring the forcing of shorts, including newsreels, to be an unfair trade practice.

The distributors contended that the practice was justified because it eliminated waste in selling and provided for well balanced programs. The producer-distributors group sought to preserve a production investment which had been based to some extent upon the "tying in" of short subjects.

(*) Transcript of Hearings on the Proposed Code of Fair Competition for the Motion Picture Industry. Volume 3, page 506. September 14, 1933.

(**) For personnel see Report of the Deputy Administrator, October 26, 1933, Page 3. National Recovery Administration Files - Motion Picture Industry.

3. THE CODE PROVISION

The following code provision relative to the forcing of shorts embodied pratically in toto the producer-distributors' pre-code proposals:

> "No Distributor shall require as a condition of entering into a contract for the licensing of the exhibition of feature motion pictures that the Exhibitor contract also for the licensing of the exhibition of a greater number of short subjects (excepting news reels), in proportion to the total number of short subjects required by such Exhibitor, than the proportion of the feature pictures for which a contract is negotiated bears to the total number of feature pictures required by the Exhibitor." (*)

To take care of exhibitors' objections regarding the holding up of features because of a delinquency under a contract for short subjects, the following provision was included in the Code:

> "No Distributor shall refuse to deliver to any Exhibitor any feature motion picture licensed under an exhibition contract therefor because of such Exhibitor's default in the performance of any exhibition contract licensing the exhibition of short subjects of such Distributor, or vice versa, provided such Exhibitor has agreed to arbitrate all claims and controversies arising under all existing Optional Standard License Agreements between them." (**)

4. OPERATION OF THE PROVISION

The privilege of seeking relief from an excessive number of shorts was not made retroactive with respect to contracts executed before the effective date of the Code (***).

This ruling is in contrast to the ruling made by the Motion Picture Code Authority with reference to the ten per cent cancellation clause . (****)

(*) Article V-D, Part 5 of the approved Code.

(**) Article V-D, Part 10 of the approved Code.

(***) Code Authority Appeal Decision No. 52 - National Recovery Administration Files.

(****) Code Authority Resolution, March 29, 1934. National Recovery Administration Files.

A brief submitted to the Senate Finance Committee on April 24, 1935 by the Allied States Association of Motion Picture Exhibitors included the following statement relative to the problem of short subjects:

> "The exhibitors during the code proceeding submitted a provision which would cut out the practice by the roots. The provision in the code permits the forcing of shorts to the full extent of an exhibitor's playing time and recognizes and legalizes the practice. Moreover, it is so worded that it can be easily evaded." (*)

Study of the record of the administration of this Code leads to the assumption that this provision gave little relief to exhibitors in general. Distributors evaded the provision by supplying short subjects on a weekly program basis, charging the exhibitor a sum equal to an average of the payments made during the previous year. In effect the exhibitor paid an amount equal to his previous year's cost even though the number of shorts might have been decreased.

According to a report submitted by the Code Authority only two complaints regarding the forcing of shorts were considered by the Local Grievance Boards in the period from their inception to April 12, 1935.

An interpretation was made of the term "short subjects" which excluded separate installments of serial pictures from the general category of short subjects (**). It was a custom to sell serials out of blocks separately from shorts and features.

Representatives of the Motion Picture Theatre Owners of America, as reported in the trade press, expressed dissatisfaction with the operations of the Code provision on shorts at the fifteenth annual convention of this organization held in New Orleans on February 25, 1935.

In a brief submitted to the Senate Finance Committee in April, 1935, during the investigation of the National Recovery Administration the Independent Theatre Owners Association, Inc. of New York, stated its objections as follows:

> "The (Code) provision, does not more than recognize the existence of an evil and in no way remedies the same. In the first place, it (the Code) exempts newsreels from the operation of the provision and practice has shown many exhibitors overstocked in newsreels having been forced to purchase four to five newsreels from different companies. With respect to this type of short, the evil is even greater since only one company's reels can be used under any circumstances, as they usually cover the same important news points.

(*) The Record of the Hearings before the Senate Finance Committee. Investigation of the National Recovery Administration pursuant to Senate Resolution 79, Page 2029.

(**) Administrative Order No. 124-39 - November 8, 1934. Signed by Sol A. Rosenblatt, Division Administrator.

In addition thereto, the provision is impratical in requiring the revelation by the exhibitor of the contract which he has with other distributors and involves the necessity of intricate mathematical computations in order to reach a result.

"That any such condition and burden should be imposed upon an exhibitor is self-evident manifestation of the unfairness of the provision and of the partiality toward the producer distributor. Under all circumstances, the provision still allows the distributors to force upon the exhibitors more short subjects than they can use. . . . . .

"Only one provision can remedy this evil in the industry. An absolute prohibition against any requirement that an exhibitor be forced to purchase shorts in order to receive features from a distributor and the levying of severe punishment upon any distributor who refuses to abide by such provision." (*)

5. DISCUSSION

The affiliated and unaffiliated circuits because of their important bargaining position are able to resist the forcing of short subjects to the same extent that they can resist the practice of block booking.

The independent exhibitors are powerless to resist the forcing of short subjects. A refusal to purchase short subjects ordinarily results in difficulty in contracting for features.

The independent producers of short subjects finds a large part of the market closed to their product. Large independent producers of short subjects usually work with major producers and effect distribution of their product through the selling organizations of the major companies.

The forcing of short subjects is made possible through the ability of major companies to control the feature pictures which the exhibitor must purchase to remain in business. Competition from independent producers of short subjects is thus restrained, tending to create a closed market.

The most practical solution to the problem would seem to be one similar to that employed in the Code; that is, to prohibit the forcing of a greater number of short subjects in proportion to the total short subject playing time than the number of feature pictures contracted for from the same distributor bears to the total feature picture playing time. If, in addition to the above, the exhibitor was given the privilege of cancelling a certain percentage of the short subjects bought, a market would be opened to quality short subjects that might appear, from whatever source, through the year.

(*) Hearings before Senate Finance Committee - Investigation of the National Recovery Administration. 74th Congress, First Session, pursuant to Senate Resolution 79. Page 1320.

Such a system would relieve the exhibitor from any necessity of contracting for a greater number of short subjects than he could play; would preserve a part of his former short subject market to the producer-distributor, and would open the market to independent producers of short subjects. It would greatly encourage the production of quality short subjects by both major and independent producers. It would, of course, be necessary as was done in the Code to provide against any resort by distributors to a "short subject service".

E. REBATES ON ADMISSION PRICES

1. DESCRIPTION OF THE PRACTICE

In certain areas of keen competition, exhibitors resort to devices which are equivalent to rebates on advertised admission prices, such as premiums, lotteries, give-aways, two-for-one admissions, coupons and script books. The public frequently responds eagerly to the "something for nothing" lure, whereas an advertised simple reduction in admission prices may bring but a small increase in patronage.

The practice of giving rebates is the defensive weapon used by the exhibitor struggling (1) to meet the competition of larger exhibitors offering better and fresher programs, or (2) to meet the competition offered by another exhibitor who has adopted a double feature policy or (3) to meet the competition of a rival who had been able to negotiate unfair clearance or (4) to get around clearance based on a minimum admission price which cannot be lowered without breach of contract.

The rebate practice is the prickly heat of exhibition. Wherever the practice proves successful in drawing more patrons or in enticing patrons from competing theatres, the practice spreads. There are many instances where all the theatres in a competitive area have become engaged in various schemes, offering gifts that have ranged from worthless gadgets to automobiles.

2. PRE-CODE PROPOSALS

Claims were made by various groups during the formulation of the Code that these various forms of price cutting had demoralized and were threatening the stability of the exhibition branch of the Industry.

Practically all groups agreed that equitable clearance and zoning schedules should be attempted under the Code. Clearance in large part is determined by the admission prices charged by the theatres involved. Naturally, no standards could be set up where exhibitors were free to indulge in unrestrained price-cutting.

The Producers' and Distributors' Committees submitted for inclusion in the Code a proposal calling for the elimination of all these devices whenever they were unfair to competing exhibitors and in all cases where they tended to deceive the public. The element of deceit entered where one customer might pay the full admission price, not knowing that others had entered on "throw-away" tickets, "two-for-one" tickets, gift passes and the like.

Distributors contended that the motion picture show should be confined to entertainment; that lotteries and games of chance were illegal; and further, that handling gifts of merchandise was an alien enterprise. They proposed that the Code require distributors to refuse to license films to offending exhibitors.

Some independent exhibitors favored continuation of the practice, but the Code proposal submitted by the Exhibitors' Committee also provided for the elimination of these schemes where they were unfair to competing exhibitors and in all instances where the public was subject to deception. The Exhibitors' differed from the producers' and distributors' suggestion in that it pre-supposed the existence of clearance and zoning schedules which, exhibitors generally believed would contain measures restricting price cutting. The exhibitors' proposal was qualified to the extent that where no local boards existed, the ruling of 75 per cent of the exhibitors in a designated area would prevail.

3. OBJECTIONS TO THE ELIMINATIONS OF PREMIUMS

Exhibitors favoring the practice of giving premiums received powerful support from the manufacturers. Pottery manufacturers who sold large quantities of chinaware to small exhibitors throughout the country expressed strong opposition to the elimination of premiums. Figures of various companies were submitted which purported to show threatened losses of thousands of dollars worth of business. (*) Representing the National Brotherhood of Operative Potters (affiliated with the American Federation of Labor), stated that 2,000 of the Brotherhood members were employed in the production of premiums which were distributed by motion picture houses. (**)

4. CODE PROVISIONS

The Code provisions as finally drafted declared that the lowering of announced and advertised admission prices in cases of lotteries, prizes, reduced script books, coupons, throw-away tickets, two-for-one admissions, or by other similar devices which were unfair to competing exhibitors or which tended to deceive the public, were unfair trade practices. (***)

(*) Transcript of Hearings on the Proposed Code of Fair Competition for the Motion Picture Industry, Volume 1, September 12, 1933, pages 216-234.

(**) Transcript of Hearings on the Proposed Code of Fair Competition for the Motion Picture Industry, Volume 1, September 12, 1933, page 214.

(***) Article V-E, Part 3, Section 1 of the approved Code.

However, the Code then stated that "rebates such as premiums in the form of gifts and other things of value shall be deemed to be unfair trade practices only if 75 per cent of the affiliated exhibitors and 75 per cent of the independent exhibitors in a particular area, voting separately, so indicated their desire." (*)

Moreover, a period of ninety (90) days was granted before any such ruling should become effective in order to allow exhibitors to dispose of whatever supply of premiums they might have in stock. (**)

Enforcement of these provisions after violations had been found was to be secured by giving the local Grievance Boards the power to order the distributors to refuse further delivery of films if the violating exhibitor refused to cease and desist from continuing the practice. (***)

5. OPERATION OF PROVISIONS

Exhibitors strictly adhering to gifts of premiums were generally unmolested. An examination of the Code Authority records available in the files of the National Recovery Administration shows that three unsuccessful attempts were made to secure the elimination of premiums by a 75 per cent vote. (****) Thus the actual operation of these provisions resulted in a complete victory for the pottery group and the exhibitors desiring to continue the practice.

Little difficulty was encountered in cases where devices were adopted which directly lowered the published admission price, such as coupons, passes and two-for-one admissions. All such cases were considered to deceive the public and so to be in violation of the Code. Determinations by local Boards in such cases resolved down to a finding as to whether the respondent was guilty of using the practice and whether he competed with another theatre.

Considerable difficulty was experienced in making decisions where various schemes incorporating the element of chance were employed which indirectly involved a possible reduction in admission price. Particular reference is made to "Bank Night", "Race Night", and "Screeno", all of which carry copyrights. "Bank Night" was the most frequently used scheme.

a. Bank Night

"Bank Night" takes its name from the establishment of a bank account

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(*) Article V-E, Part 3, Section 2 of the approved Code.

(**) Article V-E, Part 3, Section 4 of the approved Code.

(***) Article V-E, Part 3, Section 3 of the approved Code.

(****) Code Authority Appeal Decisions No. 238, No. 463, No. 473.

by the management of a theatre and this bank account is awarded by chance to some person in or near the theatre at the time of a drawing held on the stage. In the early forms of the scheme, patrons registered as they entered the theatre. The counterfoils were collected and on one night a week, a drawing was held on the stage. One name was called; if that person was in the audience, he was awarded the bank account. If the person whose name was called was not present, the bank account, usually with an added amount each time, would be set aside until some person finally claimed the entire accumulated amount. It was necessary to register only once to participate in Bank Night.

Before the Code Authority attempted to suppress this device, participants were required to buy a ticket of admission to the theatre, thus furnishing consideration and causing the scheme to be held a lottery in some jurisdictions. Later, the registration books were placed in the lobby of the theatre and any one was free to register and to become eligible for the prize. On the night of the drawing, announcement of the name drawn was made outside the theatre as well as on the stage. The winning individual was required to present his claim within a short time, usually within a minute or two after the announcement.

b. Race Night

"Race Night" involves a scheme whereby each patron retains the numbered stub of his admission ticket, careful note being made of the last digit of the number. During the performance, a short subject depicting various advertised articles is flashed upon the screen. A race of ten contestants carrying large numerals from zero to nine then takes place. Patrons holding the winning number are entitled to a prize package if they can name at least four of the articles just previously shown upon the screen.

c. Screeno

"Screeno" involves a scheme whereby each patron is given a card containing five vertical and horizontal numbers corresponding to a list of numbers on the screen. During an appropriate intermission of the regular performance, an indicator is whirled around a dial stopping at one of these numbers. Patrons cross off the numbers on their cards after each successive whirl. The first person completing a vertical, horizontal or diagonal series of numbers on his card yells "Screeno" which upon verification entitles him to a cash prize.

Many other schemes similar in nature but operating under different names were encountered by the Code Authority. The names of a few of these follow: $aving$ Account Night, Grocery Night, Thrift Night, Eddie's Whoopee Party, Cash Night, Country Store Night, Gift Night, Merchants Prosperity Night, Money Night, Farm Night, Jack Pot Night, Purse Night, Surprise Night.

The local Grievance Boards experienced considerable confusion in deciding whether these various schemes incorporating the element of chance were violations of the Code. Appeals to the Code Authority were

so numerous that the Code Authority requested an official interpretation by the National Recovery Administration. A ruling was issued which declared that:

So-called "Race Nights" and so-called "Bank Nights" or similar or like schemes or plans otherwise designated if any participant therein is directly or indirectly required to purchase or otherwise acquire for value a ticket or other token of admission to the theatre when any such scheme or plan is being offered or presented, (*) are violations of the Code.

Plans were altered after this interpretation so that the participants were not required to purchase an admission ticket but might simply sign their names opposite a number in a book kept in the lobby of the theatre. When the drawings took place announcements were made in the lobby as well as inside the theatre. The Code Authority ruled that such alterations were mere technicalities introduced to circumvent these provisions and that they produced results similar to lotteries. Therefore, these variations were declared to be violations. (**)

All material relating to "Bank Night" was barred from the mails by the United States Post Office Department under Section 213 of the United States Penal Code (18-U.S.C. -336). Postmasters throughout the country were so informed. (***)

Exhibitors facing cease and desist orders from local Grievance Boards were placed in the position of either complying, closing their theatres from lack of film supply, or seeking injunctions against the Grievance Boards or the distributors.

An indeterminate number of these injunction proceedings were filed. Fourteen are recorded in the files of the Litigation Division of the National Recovery Administration. The majority of these cases were still pending at the time the Schechter case decision put a stop to further Code activity. However, several decisions interesting in their lack of uniformity were handed down.

The most notable decision against "Bank Night" was given by Judge Charles A. Dewey on May 19, 1935, in the United States District Court for the Southern District of Iowa in the case of Central States Theatres Corporation v. Members of the Local Grievance Board, et al. - No. 4563, Equity Ruling on Application for Temporary Injunction. Judge Dewey denied an application for the issuance of a temporary injunction against

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(*) Administrative Order No. 124-15 - April 17, 1934
Signed by Sol A. Rosenblatt, Division Administrator.

(**) Code Authority Appeal Decisions No. 121, No. 130 and No. 198.

(***) Letter of Karl A. Crowley, Solicitor, Post Office Department to Sol A. Rosenblatt, Director of Compliance and Enforcement, National Recovery Administration, May 6, 1935.

distributors enjoining them from ceasing to supply film to the complainants and a restricting order previously in force against the defendants was terminated, on the grounds that the "Bank Night" scheme which the exhibitor attempted to have protected bordered on a lottery and did not warrant protection by a Court of Equity.

In direct contrast to this decision, the following order was entered by Judge Paul J. McCormick in the District Court of the United States in the Southern District of California, Central Division in the case of Ormard Theatres, Inc. v. J. J. Milstein et al., No. Equity 554-M:

- Minute Order -

> The acts of Complainant in carrying on "Bank Night" and "Bicycle Give-away" at the theatre operated by it in Ormard, California, are so remote from interstate or foreign commerce as to be negligible and inconsequential to either.
>
> There being no substantial relation to commerce of Federal cognizance in the admitted acts of Complainant, the Motion Picture Code Authority exceeded its power in issuing the "Cease and Desist Order" that is sought to be enforced against Complainant.
>
> The Motion to Dismiss the Bill of Complaint is denied.
>
> The status quo should be preserved, and accordingly, the restraining order of March 6th, 1935 is now made an injunction pendente lite, and as such, will issue.....
>
> Dated April 4th, 1935.

On June 12, 1935 an order was accordingly entered signing, filing and entering stipulation and decree of dismissal without costs.

In a third case (*) the court ordered the complaining exhibitor to cease running "Bank Night" and to abide by all future decisions of the local Grievance Board, and enjoined the local Grievance Board from enforcing their cease and desist order. The substantial effect was to substitute a Court order for the order of the local Grievance Board.

One may infer that the compliance instrument proved very effective since no records have been disclosed showing the permanent closing of a theatre due to a discontinuance of film supply. Pictures were denied to exhibitors for a short time in a few cases. (**) The respondents in such cases usually discontinued the practice and started injunction

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(*) Mid-West Film Distributing Corporation v. D. M. Thornburg, et al. United States District Court for the Southern District of Iowa, May 13, 1935, Bill for Declaratory Judgment.

(**) Code Authority Appeal Decision No. 251

proceedings, and in one case damage action, against the members of the local Grievance Boards. (*) National Recovery Administration lawyers assisted in the defense of these cases until the Codes were declared unconstitutional; the defendants were then left to their own resources.

According to reports submitted by the Code Authority to the National Recovery Administration, (**) 609 cases, or approximately 55 per cent of a total of 1,122 trade practice complaints brought before the local Grievance Boards in 1934, related to schemes involving the element of chance. During the first three months of 1935, 152 cases, or 63 per cent of a total of 240 complaints involved such plans.

National Recovery Administration files contain records of 150 appeals to the Code Authority from local Board decisions in cases involving rebates on admission prices. Analysis of these 150 cases shows that the Code Authority affirmed 131 decisions and reversed two decisions where the local Board decision had been for the complainant; affirmed two decisions and reversed four where the local Board decision had been for the respondent; dismissed five cases, and remanded six to the local Boards for further hearing.

6. DISCUSSION

According to the daily trade press of the Industry, the practice of giving rebates on admission prices through all the various schemes which have been discussed has invaded new territories since the invalidation of the Code.

In these situations, exhibitors in their efforts to keep theatre seats filled and their competitors' houses empty seem but to reflect the symptoms of national advertising, particularly over the radio. The country is in one of its recurrent periods of the giveaway. Practically every commercial broadcast over the radio offers something for the listener to acquire either by collecting carton tops or by simply writing to the station or to the advertiser. The current craze to check listeners becomes in time more fascinating than watching a sales curve rise. The public response does seem to become stimulated - whether giveaways are offered over radio or by the motion picture theatre.

The usual result of the introduction of these attendance-lures in motion pictures exhibition is a form of price war which no one can win. Having responded to one stimulus, the public looks for greater and greater inducements. The motion picture industry files in the National Recovery Administration disclose an instance in point. One small exhibitor tried one device after another and finally decided to give away a Ford car. That set the community agog with excitement until the small exhibitor's chain competitor countered with the offer of a Pierce Arrow.

(*) Files of Litigation Division - National Recovery Administration.

(**) National Recovery Administration files - Motion Picture Industry.

In that community, the Industry stepped out of the motion picture business and matched dollars in gambling and merchandising schemes. The habit once started in a community has a habit of its own -- it spreads and multiplies in ingenuity of scheme; in simple economics, the last state of the exhibitor is worse than his first.

The practice is to be found almost exclusively in areas of keen competition. Premiums are seldom given where there is little competition. Experience has shown that where schemes similar to lotteries have been used in non-competitive areas, attendance has been stimulated only on the one night that drawings are held. The net result has been no gain to the exhibitor.

Rebates on admission prices are usually the resort of the subsequent-run exhibitor against too strong competitive forces, or against unreasonable clearance or zoning. Usually the device affords a respite - temporary at the best. But it does not remove the causes of this exhibitor's difficulties.

The exhibitor, by and large, considers the most effective and fairest means of regulation of the practice to be through clearance and zoning schedules. In addition to the "something for nothing" incentive, and no matter how effected, all these schemes involve a reduction in admission prices. The exhibitor considers that clearance should be increased over any exhibitor using such devices exactly as if said exhibitor had cut admission prices.

F. DESIGNATED PLAY DATES

1. DESCRIPTION

Designated play dates is a trade term used to describe the practice of designating a specific day or days on which pictures must be shown. In selling a group of pictures under the block booking system, the distributor may require that certain pictures - estimated to have unusual box office attraction - be licensed on a percentage basis and, to make profits more certain, may then require that such pictures be played on days of the week when the largest attendance is assured.

The distributor practically without exception designates Saturdays, Sundays, and holidays, which are preferred playing dates due to the prevailing larger attendance and generally higher admission prices. Either Saturday or Sunday in motion picture exhibition experience is from two to three times as productive as any other single week day. The same rule applies to holidays.

Percentage films may be sold on (1) a minimum guaranty plus a split, (2) a straight split, or (3) a split over the exhibitor's operating expenses, or (4) many other combinations of factors may be used. The exhibitor usually favors the straight split method, maintaining that the distributor should share the losses as well as the profits. The distributor usually opposes the straight percentage policy, contending that straight percentage tends to lessen the exhibitor's advertising and exploitation efforts. The distributor usually requires as a guaranty the expected rental plus a division of the receipts above that figure.

2. PRE-CODE DISCUSSIONS

During code formulation, the distributors advanced the argument that designated play dates were justified for these reasons: First, that the best pictures were thus shown on days when the public had the greatest leisure and hence inclination to see them; secondly, that since these selected pictures involved extra expense in production, the distributor was entitled to share in increased profits and lastly, that a practice profitable for the distributors was invariably good business for the exhibitors.

But, said the exhibitors, this practice interfered with an exhibitor's fundamental right to control the operating policy of his theatre and was an attempt to take this right from him. It was brought out at the hearings that the exhibitors often found it desirable to show powerful box office attractions on week days in order to average attendance throughout the week. The situation was further complicated because the exhibitors usually bought films from a number of distributors each of whom demanded preferred playing time on Saturdays and Sundays.

3. CODE PROPOSALS

The exhibitors' proposal for a code provision covering this situation stipulated that the practice of designating playing dates for specific pictures or classes of pictures be eliminated.

The distributors' proposed provision while based upon the continuation of the practice, conceded that their requirement of designated play dates might be waived in the instance of pictures deemed unsuitable for exhibition on certain days. For instance, a Mae West picture might not be considered by an exhibitor to be a wholesome or suitable feature for Sunday exhibition in a small community.

It was proposed that exhibitors should be permitted to seek relief by applying to an arbitration board three days after the receipt of notice of availability of a feature picture judged to be unsuitable on the designated date. To this proposal, this condition was attached: If the exhibitor's claim was sustained, the distributor was to have the right to designate another picture for the same date, or for a later date, upon the original terms.

4. THE CODE PROVISIONS

The Code provisions finally approved were similar to the proposals of the distributors in that local Grievance Boards were empowered to make determination as to the suitability of the picture in dispute. Appeal could be taken to the local Board by the exhibitor "for the reason only that the subject and character of the motion picture so designated are unsuitable for exhibition . . . . on such day or days". The carefully worded section should be quoted in full as illustrative of the exact negotiation agreed upon:

"Part 9. (a) No Distributor shall require any specific day or days of the week for the exhibition of specified pictures or class of pictures unless specifically provided for in the Exhibitor's contract therefor and in no event if the license fee therefor is a fixed sum only.

"(b) Where under an exhibition contract which provides that the rental to be paid by the Exhibitor for any feature motion picture specified therein shall be determined in whole or in part upon a percentage basis, and that said picture shall be played by the Exhibitor upon a designated day or days of the week and the Exhibitor seeks to be relieved from the obligation to exhibit such motion picture upon such designated day or days for the reason only that the subject and character of the motion picture so designated are unsuitable for exhibition at the Exhibitor's theatre on such day or days, the claim of the Exhibitor shall be determined by the Local Grievance Board provided for by this Code, and the Distributor, if such Local Board so determines, shall relieve the Exhibitor from the obligation to play the motion picture upon the day or days designated by the Distributor; provided that the Exhibitor makes such claim within three (3) days after receipt of the notice of availability of such feature picture. In such cases the said Local Board shall proceed to determine the matter upon forty-eight (48) hours' notice if the Distributor so desires.

"(c) If the said Local Board shall sustain the claim of the Exhibitor:

"(1) the Distributor shall have the right to designate for the same day or dates another motion picture licensed upon a percentage basis upon the same or similar terms as the motion picture in question, if there be one licensed; and to designate the motion picture objected to for a later date or dates but upon another day or days of the week; and (2) the award of the said Local Board shall not be deemed to apply to any other theatre in the same way or any other location.

"(d) Where because of a proceeding before a Local Grievance Board, or because of an award of such Local Board, it shall be impractical to serve subsequent-run Exhibitors in compliance with any notice of availability or confirmed play dates given any such subsequent-run Exhibitors, the Distributors shall have the right to change such play dates." (*)

The Motion Picture Code files in the National Recovery Administration disclose but four cases under this provision having been brought before the Grievance Boards from the inception of the Boards to April 1, 1935.

5. DISCUSSION

As in the cases of most other trade practices, the designation of play dates does not seriously affect the affiliated exhibitor or the

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(*) Article V-D, Part 9 of the approved Code.

unaffiliated circuit exhibitor because of their strong bargaining power.

The practice, however, has inherent power strongly to affect the independent exhibitor since he must not only purchase films in a comparatively closed market but must in order to secure percentage pictures concede substantial control of his preferred playing time to the distributor. Little relief could be secured under the cancellation clause in the Code; percentage pictures are usually not of the type an average exhibitor would wish to cancel outright.

The independent producer's market is still further restricted by designated play dates because the major companies largely monopolize the preferred playing time. Independent productions, therefore, when they do secure a market have left only a choice of the week days of least attendance.

What is the real nub of the problem? Does the fact that only four complaints were filed under this Code provision disclose that the true objection on the part of the exhibitor was not to unsuitable pictures for Sundays, but rather his desire to be free in his own management of his theatre? Would it not be entirely within theatre experience for an exhibitor to desire to play a cheaper picture during the week-end, knowing his attendance would be high in any event and he would thus be free to use his better pictures to stimulate attendance on the poorer days of the week? The distributor's motive in sponsoring designated play dates is simple and clear; a determination to get the largest amount of rentals possible for each of his pictures.

It is suggested that the Industry by agreement might work out an arrangement paralleling that used under the Code (Forcing of Short Subjects - Chapter IV - D of this Report) to prevent the forcing of an undue number of short subjects. This would prevent difficulties such as those experienced by one exhibitor who appealed to the National Recovery Administration officials to assist him when he discovered that he had contracted for 80 designated play dates for one year - and each one on a Sunday! Add to that arrangement, a sufficient unrestricted cancellation privilege and many of the causes of friction and controversy under this practice (designated play dates) might remove themselves from the scene.

G. NON-THEATRICAL ACCOUNTS

1. ORIGIN AND DESCRIPTION OF PRACTICE

The non-theatrical account serves many purposes. Distributors find it useful not only as a public relations policy but as a noose for the exhibitor who is comparatively free from theatre competition. Advertisers become non-theatrical accounts when they use free motion picture shows for the development of good will or as bait for promoting the sale of real estate, speculative stocks, used cars, new foods, toilet articles and other products. Schools, religious groups, social welfare groups, and community movements use motion picture performances to increase attendance or add variety and interest to their programs. Army camps, ships of the United States Navy, passenger ships, prisons, hospitals and orphanages also make use of motion pictures in performances not intended,

of course, for the general public. These uses, then, of the motion picture by individuals or others who are not primarily theatre operators have come to be known as non-theatrical accounts, and have long been and still continue to be a source of controversy in the Industry.

As motion pictures became popular and producers had advanced beyond the first eye-jerking screen flashes of boxing matches and the butterfly dances of the Loie Fuller days and had begun to introduce well-contrived stories and educational subjects, it was found appropriate to the development of good-will for the new industry to supply suitable films to hospitals and other "shut-in" institutions and to church societies. Schools, private and public, began to install projection booths and to make a feature of certain pictures. Community centers kept pace with the progress of the "movies" from the silent to the sound film and designed their newer halls to include complete projection equipment for the best pictures coming from the Hollywood and New York studios. These films were furnished by distributors at low cost and on other generous terms.

Soon exhibitors began to complain that motion picture shows at the town high school, the town hall and in the church basement constituted unfair competition. Exhibitors contended in support of their objection that those who held such performances had no regular labor costs, had no special taxes to pay, and no investment, and yet were able to exhibit pictures as attractive as those advertised for the local theatres.

Distributors meanwhile had a problem on their hands; they used the non-theatrical account as an effective answer. The problem came from the exhibitor in a small town with no immediate competing theatre. In this situation, the exhibitor was in an excellent bargaining position when he came to lease his films. If he did not show a distributor's pictures in that community, no one else would. Discovering this, distributors began to use non-theatrical accounts to create competitive situations in these towns. It is because of the use of this noose by distributors that exhibitors during the last ten years have become increasingly antagonistic toward all types of non-theatrical accounts.

2. PRE-CODE DISCUSSIONS

At the Code conferences, exhibitors proposed that distributors be forbidden to lease to non-theatrical accounts any pictures generally released, conceding that pictures might be furnished to certain specified accounts where the public was not admitted, provided that only such pictures be shown as had completed their last commercial run. It was further suggested that any distributor proposing to sell to a non-theatrical account, should, in advance, satisfy the local agency of the Code Authority that such a sale would not interfere with a regularly established theatre.

Church groups and institutions accustomed to free film servicing opposed these proposals strenuously. The distributors contented themselves with quiet opposition.

3. THE CODE PROVISION

As finally approved, the Motion Picture Code authorized the local Grievance Boards to hear complaints of exhibitors against non-theatrical accounts, and to order distributors to stop servicing such accounts if found to be unfairly competitive. The proviso was added, however, that this Code provision should in no case be used "to prohibit the licensing of motion pictures for exhibition at army posts, or camps, or on board ships of the United States Navy or ships engaged in carrying passengers to foreign or domestic ports or at educational or religious institutions or at institutions housing "shut-ins," such as prisons, hospitals, orphanges, etc. (*)

4. OPERATION OF THE CODE PROVISION

The principal activities of the Grievance Boards under this part of the Code were thus limited to the regulation of free showing of motion pictures as a crowd-catcher for advertising or sales promotion purposes. Code Authority Appeal Decision No. 122 (National Recovery Administration files) was a case of this type and illustrates the attitude of the local Boards and the Code Authority. Some 50 non-theatrical free street shows were in operation in the state of Indiana. In May, 1934, the Indianapolis Grievance Board unanimously declared that these shows constituted unfair competition and ordered distributors to cease supplying film. In its decision, which was upheld by the Code Authority on appeal, the local Board advanced the following reasons in support of its conclusion: (1) Free admissions automatically make such exhibitions unfair competition; (2) Such exhibitors are not burdened by many of the costs ordinarily paid by the regularly established theatres, such as music, license fees, code assessments, federal and state special taxes and licenses, union wage scales, etc.; and (3) Advertising such free exhibitions within a competitive area attracts patronage from regularly established theatres charging an admission fee.

In other cases, the local Grievance Boards were called on to decide whether the exhibitions of motion pictures in restaurants, clubs, amusement parks and churches was unfair to the resident exhibitor.

According to a report submitted by the Code Authority, the local Grievance Boards heard and determined 51 cases concerning non-theatrical accounts in the period from the organization of the Code Authority to April 1, 1935. No breakdown of this total as to the relief awarded is available.

In his book, "New Courts of Industry," Louis Nizer analyzes the work of the Grievance Boards for the year 1934 (**) and states that of 45 cases filed, relief was awarded the complainant in 24; that complaints were dismissed in ten cases and that eleven cases were withdrawn before a decision had been reached.

(*) Article V, Division D, Part 4 of the approved Code.

(**) New Courts of Industry by Louis Nizer, Longacre Press, Inc., New York City, 1935, pg. 127

The National Recovery Administration has on file (Motion Picture Industry files) 14 decisions of the Code Authority on appeals from decisions of the local Grievance Boards on non-theatrical cases. All had been decided for the complainant by the local Board. Thirteen were affirmed by the Code Authority and one was reversed. Inspection of these decisions shows that the Code Authority consistently enforced this provision of the Code to the fullest extent of its discretion.

5. DISCUSSION

Despite the heat shown by exhibitors at the Code-formulating conferences, relatively few complaints against non-theatrical accounts were filed under the Code. This was to be expected since in making such complaint, the exhibitor ran the possible risk of alienating or offending a part of his public.

The exhibitor needs little or no protection from non-theatrical accounts not admitting the general public, such as schools, hospitals, sanitariums, or prisons. However, the exhibitor may need protection against non-theatrical competition when such exhibitions are open to the public. The exhibitor has an investment to protect and property to maintain. He employs a number of people. His business activity is an integral part of the business activity of the community.

The Code Authority solved several delicate situations by setting-back the competing non-theatrical account a definite period after the general release date. (*) This was done on all pictures whether played by the exhibitor in question or not. In these cases the non-theatrical accounts involved were treated as commercial runs. They were given a clearance of six months after the general release date. By that time all commercial runs had been completed. The exhibitors concerned were thus guaranteed the selection of all fresh pictures and the non-theatrical account was not prevented from licensing film.

While such a solution does not go as far as some exhibitors wish, it would seem to offer an effective method of meeting the problem without prejudice to any of the parties concerned.

H. OTHER TRADE PRACTICES

In addition to those already discussed other trade practices were specified in the Code as unfair. Certain of these Code provisions which were seldom invoked or which were not particularly controversial do not command extended discussion. Accordingly, the following section is devoted to a brief analysis of these provisions, omitting those discussed elsewhere in this report, in the order in which they appeared in the Code.

1. GENERAL

(a) Defamation of Character (**)
(b) Threats of Lawsuits not in Good Faith (***)
(c) Securing Confidential Information by Unfair Methods (****)

(*) Code Authority Appeal Decisions No. 195 and No. 196.
(**) (***) (****) Article V, Division A, Parts 1, 2 and 3 of the approved Code.

(These practices are, of course, generally considered unfair and subject to "cease and desist" orders by the Federal Trade Commission. Their inclusion in the code was for the purpose of taking them out of a mythical future and making them specifically pertinent to this Industry. Their effects were largely deterrent.)

(d) Payment of unreasonable salaries for personal services which resulted in destructive competition was declared to be an unfair trade practice. The Code Authority was authorized to assess the guilty employers up to the sum of $10,000 (*). This provision was temporarily stayed, pending investigation, in the Executive Order of Approval. The report on the investigation recommended indefinite suspension of this provision. This subject is fully discussed in Chapter V - A, this report.

2. PRODUCERS

(a) The Code declared it to be an unfair practice for any producer to aid in the voluntary release or dismissal of any author, dramatist, or actor employed in connection with the production of a "legitimate" drama or musical comedy for the purpose of securing his services (**) This provision was inserted by agreement between the code formulating groups of the Motion Picture Industry and the Legitimate Full Length Dramatic and Musical Theatrical Industry. A similar provision was contained in the approved Code for the Legitimate Theatre. The reciprocal provisions were intended to prevent cross-raiding of talent.

(b) The Code declared it to be an unfair trade practice for a number of producers to conspire or take joint action to prevent any responsible producer from renting studio facilities (***). This provision was an expression of policy. If proof existed as to conspiracy, the injured party would probably seek redress in the courts and attempt to collect treble damages under the anti-trust laws.

(c) The Code declared it to be an unfair trade practice for a producer knowingly to employ as an "extra" any member of the immediate family of any employee or any person not obliged to depend upon "extra" work as a means of livelihood, unless the exigencies of production required an exception to be made (****). This provision aimed at the practice of nepotism alleged to be rampant in the studios. The provision had a beneficial deterrent effect.

3. PRODUCERS-DISTRIBUTORS

(a) Where any contract granting the motion picture rights in any dramatic or dramatico-musical work specified a date prior to which no motion picture based upon such work might be publicly exhibited, the code declared it to be an unfair trade practice for any producer or distributor to permit public exhibition of such motion picture prior to the date specified (*****). This provision merely supported a condition of a contract. Court action where proof existed would probably result in the collection of damages.

(*) Article V, Division A, Part 4 of the approved Code.
(**) Article V, Division b, Part 1 of the approved Code.
(***) Article V, Division B, Part 2 of the approved Code.
(****) Article V, Division B, Part 3 of the approved Code.
(*****) Article V, Division C, Part 1 of the approved Code.

(b) The Code, having made it an unfair trade practice for distributors and producers intentionally to interfere with existing relationships with regard to associate producers, attempted to strengthen this provision by forbidding the initiation of negotiations previous to 60 days before the termination of a then existing contract (*). The limitation on time for negotiations might work considerable hardship. In the case of Walt Disney Productions, Limited (**) the time was extended indefinitely. There appears to be no convincing reasons for having included this provision in the Code.

4. DISTRIBUTORS

(a) Threats to Build or Acquire Theatres.

The Code stated it to be an unfair trade practice for any distributor to threaten, coerce, or intimidate any exhibitor into entering into a contract for the exhibition of motion pictures, or into paying higher film rentals, by the commission of any overt act evidencing an intention to build or otherwise acquire a motion picture theatre for operation in competition with such exhibitor. It was further provided that this provision should in no way abrogate the right of a producer or distributor to build or otherwise acquire in good faith a motion picture theatre in any location (***). The provision was a well intended attempt to prevent a large Company from stifling competition by means of its greater economic power. Actually the provision was not successful since it was incumbent upon the aggrieved party to prove that any such act was not in good faith.

(b) Distributor's Employee in Competition with Exhibitor.

It was provided by the Code that no distributor's employee should use his position with the distributor to interfere with the licensing of motion pictures by an exhibitor operating a theatre in competition with a theatre in which such employee had an interest, provided, however, an employee of the distributor should not be deemed to have an interest in a theatre affiliated with such distributor.(****) This provision was of little importance since in the first place few distributors' employees are interested financially in theatres other than those affiliated with the distributor and in the second place proof of violation would be most difficult to obtain.

(c) The Code provided that no distributor should substitute for any feature motion picture described in a contract as that of a named star or stars, or of any director, or well-known author, book, or play, any feature of any other star, director, author, book, or play. The Code also forbade a distributor to substitute any other feature motion picture for one which was designated "no substitute" in a contract and further provided that no exhibitor be required to accept any such substitute. There is available no data on which to base judgment as to the extent or the prevalance of this practice; the Code recognized its existence.

(*) Article V, Division C, Part 2 of the approved Code.
(**) Administrative Order No. 124-12 signed by Sol A. Rosenblatt, Division Administrator, March 23, 1934.
(***) Article V, Division D, Part 1 of the approved Code.
(****) Article V, Division D, Part 2 of the approved Code.

It was specifically provided however, that a distributor should not be prohibited from changing the title of any motion picture contracted for, by making changes, alterations or adaptions of any story, book, or play or from changing the director, or any member of the cast of any motion picture except as specifically prohibited in the preceding. It was further provided that in case any such substitution was made, notice of such substitution should be given by paid advertising of not less than one quarter page in at least one issue of a national trade publication before the release date of the motion picture in which the substitution had been made (*). The practice forbidden would involve a breach of contract. However, the exhibitor hesitates to jeopardize his future supply of motion pictures by engaging in any such litigation with a distributor. The good intent and purposes of the provision were weakened by the various provisos.

(d) The Code provided that no distributor should divulge or authorize or knowingly permit to be divulged by any employee or checker any information received from the checking of receipts of its motion pictures excepting that such information might be divulged in any controversy heard by the Code Authority, or for any Government or Code Authority report (**). The provision was ineffective since, first, it would be next to impossible to obtain proof of violation and, secondly, a distributor might easily escape any responsibility by disclaiming knowledge of an employee's action.

(e) The Code provided that no distributor should convey or transfer his assets for the purpose of avoiding the deliveries to any exhibitor of any feature motion picture licensed for exhibition by such exhibitor (***). The difficulty here presented is to prove fraudelent intent. The provision was not used.

(f) The Code required a distributor to make a fair adjustment of license fees for the exhibition right of a number of pictures licensed in a group for a stated average sum per picture. If the total number of pictures so licensed were not delivered, provided that the exhibitor should have fully and completely performed all other terms and conditions of the contract (****). Since it is not the general practice in the Industry to contract for pictures on a stated average basis, this provision was not used.

(g) The Code provided that no distributor should refuse to deliver to any exhibitor any motion picture because of such exhibitor's default in the performance of a contract licensing the showing of short subjects of such distributor, or vice versa, provided that such an exhibitor had agreed to arbitrate all claims and controversies arising between them under the clauses of the Optional Standard License Agreement (*****). In most contracts between distributors and exhibitors a clause appears specifying that in cases of violation by the exhibitor of any one contract, any other subsisting contracts are subject to suspension at the will of the distributor. Distributors prefer to retain such provisions as giving them greater economic control over exhibitors. Probably all parties concerned would be better off if such clauses were outlawed from all contracts.

(*) Article V, Division D, Part 3 of the approved Code.
(**) Article V, Division D, Part 6 of the approved Code.
(***) Article V, Division D, Part 7 of the approved Code.
(****) Article V, Division D, Part 8 of the approved Code.
(*****) Article V, Division D, Part 10 of the approved Code.

(h) The Code required that first offer of any special production released during the year should be made to the exhibitor contracting for the major portion of that distributor's pictures (*). Inasmuch as the prices and terms were left entirely within the control of the distributor, the offer might mean absolutely nothing. However, in one case the local Grievance Board unanimously decided that a distributor had violated this provision. The Code Authority confirmed the decision of the local Board (**).

(i) The Code obligated the distributor to bide by such regulations as might be promulgated by the Code Authority for the prevention of fire (***). The Code Authority was never active in any such activity. Furthermore, distributors were required by local fire regulations to take proper care of their premises.

5. EXHIBITORS

(a) The Code stipulated that any exhibitor entering into a contract for the exhibition of motion pictures permitting the exhibitor to select from the total sum of pictures licensed less than 85 per cent of the total number and to reject the remainder, should by written notice to the distributor reject each of such motion pictures, not to exceed the number which might be rejected, within 21 days after availability of such pictures had been announced in the exchange territory wherein said exhibitor's theatre was located, and upon the exhibitor's failure to give such notice each such pciture should be deemed to have been selected (****).

The purposes of this provision were to codify and make uniform existing industry practices, thus preventing disputes, and to prevent the use of selective contracts as an over-buying device. The provision, while of benefit to subsequent run exhibitors, would have been more useful had it been strengthened to read "upon the exhibitor's failure to give such notice each of such pictures should be deemed to have been rejected". Such a provision would have enabled the small exhibitor to get immediate availability for negotiations at the expiration of 21 days.

Under the present system where a strong competitor adopts the selective contract system of buying pictures, the small exhibitor may not know until the end of the season what pictures will be available. In one important case before the Code Authority involving continued and intolerable delay in selection by a first-run affiliated theatre, the Code Authority ordered the first-run exhibitor to make selection by the 21st day or else the pictures would be deemed to have become available to his small competitor (*****). Although this decision was directly contrary to the wording of the Code, the Code Authority felt that this decision was in its proper discretion if unjust competitive action by the first-run theatre was to be stopped and a fair chance granted to the small competitor. The respondent affiliated exhibitor agreed and complied with the order. Any attempts at regulation of overbuying (q.v.) necessarily involve careful consideration of the use of selective contracts.

(*) Article V, Division D, Part 11 of the approved Code.
(**) Code Authority Appeal Decision No. 126.
(***) Article V, Division D, Part 12 of the approved Code.
(****) Article V, Division E, Part 1 of the Code.
(*****) Code Authority Appeal Decision No. 347

(b) The Code provided that no exhibitor should transfer ownership or possession of a theatre or theatres for the purpose of avoiding an incomplet ed contract for the exhibition of motion pictures (*). Unscrupulous and financially irresponsible exhibitors have on occasion resorted to this practice. Enforcement was difficult since it was necessary to prove fraudulent intent. However, one case under this provision was decided for the distributor by the local Board and Affirmed by the Code Authority (**).

(c) It was stipulated in the Code that no exhibitor should advertise any feature motion picture before completion of a prior run (***). Some such protection is needed by prior run exhibitors. Customers are less likely to attend larger, prior-run houses if they see advertising announcing subsequent showings at reduced prices. It was provided in the Code that where this provision worked a hardship on any individual exhibitor, he might plead his case before the local Grievance Board and be afforded relief if justified. It was further provided that this injunction should not be interpreted in such way as to prevent general advertising of future attractions by an exhibitor.

Under this Code provision, an exhibitor could advertise his house policy and his future programs in general terms. It was permitted to announce for instance that during the season a Garbo picture, a Clark Gable or Joan Crawford or a Fred Astaire picture would be shown but specific dates could not be given in advance of the first or prior runs of these pictures. This was adjudged a sound regulation of advertising privileges, otherwise widely abused.

There was some difficulty in enforcing this provision. In big cities, particularly Chicago, the period of clearance between subsequent runs was quite short. Approximately 20 per cent of all cases heard by local Grievance Boards were brought under this provision, It would seem possible for distributors to eliminate this practice by inserting a provision in exhibition contracts stipulating that no advertising of a picture licensed should be made prior to a specified period before the exhibition date of the picture provided that such period is less than the negotiated clearance.

(d) It was provided in the Code that to prevent disturbance of continued possession of a theatre by an exhibitor it should be an unfair trade practice for any person engaged in the industry knowingly and intentionally to interfere with pending negotiations between the exhibitor and any other party pertaining to or affecting the occupancy of any theatre than that actually operated by such exhibitor (****). Since this provision affected the rights of landlords who were not parties to the Code enforcement was difficult. The provision should probably have been ommitted from the Code.

A number of cases of this type were heard on appeal by the Code Authority. In only three cases were decisions affirmed for the complainant

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(*) Article V, Division E, Part 4 of the approved Code.
(**) Code Authority Appeal Decision No. 186.
(***) Article V, Division F, Part 5 of the approved Code.
(****) Article V, Division E, Part 6 of the approved Code.

and in only one case was a decision for the respondent reversed on appeal. The majority of all cases were dismissed. In perhaps the best defined case which was presented to the Code Authority, it was found that the acts of the respondent in obtaining an interest in a chattel mortgage on the equipment in a theatre and using the interest thus acquired to force a lease to himself when the complainant was in possession and operating the theatre and negotiating for a lease constituted a violation of the Code (*). An inspection of the decisions of the Code Authority shows that the issue was avoided wherever possible.

The "pending negotiations" clause was strictly interpreted. Where there were no pending negotiations, there was no complaint. In one case the complainant had been operating his theatre in the Town Hall for a number of years. The town gave public notice that bids would be received for the rental of the building. The complainant and the respondent both submitted bids and the respondent's bid was found to be higher. The Code Authority found no evidence of interference with pending negotiations (**).

In another case the complaint was dismissed by the Code Authority on the ground that there was insufficient evidence to show willful and intentional violation (***).

(c) The Code prohibited an exhibitor from exhibiting a motion picture previous to dawn of the first licensed and booked day of exhibition unless express written permission therefor was given in the license agreement (****). This provision was inserted to prevent occasional unauthorized midnight shows by exhibitors for which the distributors received no additional compensation. The provision is covered by adequately worded clauses in most license agreements. It was inserted in the Code to act as a deterrent and to provide for quick and inexpensive determinations rather than lengthy and costly Court actions.

6. DISTRIBUTOR-EXHIBITOR

(a) The Code provided that the so-called Optional Standard License Agreement of 1933 should be the standard form of license contract to be used by distributors for licensing the exhibition of motion pictures unless the parties mutually agreed to a different form. It is further provided that when any provision of such agreement conflicted with Code provisions the agreement should be considered to be amended to conform. It was stipulated that although individual sales policy provisions might be substituted in the agreement, such stipulations should not be contrary to the Code Provisions (*****).

This contract provided for arbitration rather than litigation in case of any disagreement between the distributor and exhibitor. The only difficulty met with, in the use of this contract, was that exhibitors charged that certain distributors wrote sales policy provisions into the license agreement which conflicted with the spirit if not the letter of the Code.

(*) Code Authority Appeal Decision No. 184
(**) Code Authority Appeal Decision No. 180
(***) Code Authority Appeal Decision No. 79
(****) Article V, Division E, Part 7 of the approved Code.
(*****) Article V, Division F, Part 1 of the approved Code.

The comments of Nathan Yamins with regard to this practice as applied to the cancellation privilege have been quoted previously under Section C of this Chapter. The use of a standard contract would seem to be desirable. However, such a contract must retain sufficient flexibility to meet varying conditions throughout the Industry.

(b) The Code provided that arbitration of all disputes between distributors and exhibitors arising under any exhibition contract should be in accordance with the optional arbitration contract of the so-called Optional Standard License Agreement of 1933, except as the provisions of such clause might be modified by the provisions of the Code. It was further provided that the number of arbitrators to be appointed by each party under this clause might be reduced to one each; if these two could not agree they could appoint an umpire (*).

One of the main elements with regard to the distribution and showing of film is time. Recourse to the Courts in cases of disputes over exhibition contracts have resulted in delays and considerable expense and the Industry has, wherever possible, attempted to substitute arbitration for litigation with usually favorable results. Independent exhibitors have objected in some cases to any compulsary arbitration, feeling that they should have recourse to the Courts if they are not satisfied with the results of any such proceedings.

(c) The Code provided that no exhibitor or distributor should induce or seek to induce the breach of any subsisting contract (**). The language of the provision was not clear; it was uncertain whether the distributor or exhibitor referred to in the clause was party to the contract under discussion. The clause was included in the Code as were so many others to minimize litigation by the settlement of disputes within the jurisdiction of the Code Authority.

(d) It was stipulated in the Code that no exhibitor or distributor could give any gratuity for the purpose of procuring advantages not otherwise obtainable; or as an inducement to influence any exhibitor or distributor or representatives of either not to deal with any competing exhibitor or distributor (***). This is one of those practices which has been condemned in "cease and desist" orders by the Federal Trade Commission. The Code attempted to provide substitute relief in such matters instead of the delay of legal action by the Federal Trade Commission.

(e) It was provided in the Code that no exhibitor or distributor should make any disclosure of box office receipts for publication except necessary reports to stock holders, credit and governmental agencies and other like bodies. This provision was qualified by stating that no distributor or exhibitor should be responsible for disclosures by unauthorized agents (****).

(*) Article V, Division F, Part 2 of the approved Code.
(**) Article V, Division F, Part 3 of the approved Code.
(***) Article V, Division F, Part 4 of the approved Code.
(****) Article V, Division F, Part 5 of the approved Code.

7. UNSPECIFIED GRIEVANCES AND COMPLAINTS

In that part of the Code setting up the local Grievance Boards, it was prescribed that:

> All complaints and grievances of Exhibitors or Distributors concerning provisions of this Code or otherwise and not specifically designated to be heard and passed upon by the Local Clearance and Zoning Board shall be heard by the Local Grievance Board.....(*)

The local Grievance Boards, and through them the Code Authority, were requested to hear and decide a number of complaints under this "or otherwise" clause. The most frequent causes of complaint were breaches of contract or the erection of a competing theatre.

The Code Authority refused to consider any such cases. The general position of the Code Authority may be inferred from its decision in a case certified for determination to the Code Authority from the Washington Grievance Board. This was a complaint by an exhibitor that the respondents should be restrained from proceeding with the erection of a theatre which would operate in competition. The Code Authority stated that:

> The power in the Code Authority to determine a complaint or grievance concerning the provisions of the Code "or otherwise" certified to it by a local Grievance Board rests entirely in its discretion. We are of the opinion that the intendent of the provision, despite its general wording, does not extend to a complaint of the character above described.....(**)

8. GENERAL TRADE PRACTICES

Between 1919 and 1922, the Motion Picture Industry as has been indicated previously in this report encountered a general outbreak of public indignation over allegedly salacious features (***) and over scandals involving prominent motion picture actors and actresses (****). Religious and welfare groups were working for Federal and State censorship legislation. The major companies did not favor this. Howard T. Lewis, a disinterested authority on the Industry states the position thus:

(*) Article VI, Part 2, Section 4 of the approved Code.

(**) Code Authority Appeal Decision No. 3.

(***) "The Motion Picture Industry", by Howard T. Lewis, D. Van Nostrand Co., N.Y.C., 1933, pg. 368.

(****) "A Million and One Nights", by Terry Ramsaye, Simon and Schuster, Inc., N.Y.C., 1926, Volume II - pgs. 803 - 821.

> Faced with the probability of additional state and national legislation, the industry recognized the need of effecting a united front under the leadership of one executive....(*)

Accordingly, the Motion Picture Producers and Distributors of America, Inc. was formed in 1922 with Will H. Hays as active head. Since that date this group has more or less effectively resisted various movements to compel Federal or State censorship of films (**), principally by undertaking the question of censorship itself. In March, 1930, in order to facilitate this method, the Motion Picture Producers and Distributors of America, Inc., announced the adoption of a code of moral principles to govern production of films (***). This set of guiding principles became known as the Hays Morality Code. On the basis of this code, the producers and distributors have consistently opposed extra-industry regulation of the quality of films. The following, quoted from a brief (unsigned and undated) presented by the producers and distributors in favor of their Code proposals, is illustrative of their attitude:

> The standards of public responsibility in relation to screen entertainment cannot remain static. New problems of self-control arise with the adoption of new entertainment themes and changing standards of public view.
>
> Hence the necessity of retaining within the industry the means of regulation.....(****)

Exhibitors at the Code formulating conferences charged the producers with frequent violations of the Morality Code. (*****) They asked that these standards be made a part of the Code of Fair Competition for the Motion Picture Industry, and that the question whether any feature picture violated these standards be left to the decision of a National Appeals Board or other duly constituted industry authority (******). In these requests exhibitors had the support of various religious and social welfare groups.

(*) "The Motion Picture Industry", Howard T. Lewis, D. Van Nostrand Co., N.Y.C., 1933, pg. 371

(**) "A Million and One Nights", Terry Ramsaye, Simon and Schuster, Inc., N.Y.C., 1926, Volume II, pg. 820

(***) "The Motion Picture Industry", Howard T. Lewis, D. Van Nostrand Co., N.Y.C., 1933, pg. 385

(****) Memorandum in Explanation and Support of the Provisions of the Proposed Basic Code of Fair Competition for the Motion Picture Industry (the producers' and distributors' Code proposals), pg. 2, National Recovery Administration files, Volume A for the Motion Picture Industry.

(*****) National Recovery Administration files, Analysis of and Sugestions Concerning Revised Code, Submitted in Behalf of the Independent Producers, Distributors and Exhibitors' Code Protective Committee, pg. 44

(******) Article 19, Code Proposals submitted by the Exhibitors Committee, August 23, 1933, Volume A for the Motion Picture Industry, National Recovery Administration files

The major producers and distributors objected to any procedure giving the unaffiliated interests in the Industry or the Government any voice as to whether pictures should or should not be shown. The following is quoted from a brief (unsigned and undated) presented by the producers and distributors in favor of their proposals as opposed to those of the exhibitors:

> The provision proposed by the Exhibitors was adopted before the provision proposed by the Producers and Distributors was formulated and was an effort to harmonize with such provision as was expected to be adopted by the Producer and distributors. We should, therefore, consider the provision in the Exhibitors' Code as solely an expression of desire to adhere to the provision of the Producers' and Distributors' Code.....(*)

The producer-distributor proposal read as follows:

> The industry pledges its combined strength to maintain right moral standards in the production of motion pictures as a form of entertainment. To that end the industry pledges itself to adhere to the regulations promulgated by and within the industry to assure the attainment of such purpose. (**)

The Independent Producers, Distributors and Exhibitors Code Protective Committee had the following to say regarding this proposal:

> The nebulous character of the pledge set forth.....is, in itself, evidence of an utter lack of sincerity, and is assuredly and completely ineffectutual. (***)

The proposal of the Producers and Distributors Committees was that incorporated in the approved Code (****).

(*) pg. 1. Memorandum in Explanation and Support of the Provisions of the Proposed Basic Code of Fair Competition for the Motion Picture Industry, (the Producers' and Distributors' Code proposals), Volume A for the Motion Picture Industry, National Recovery Administration files.

(**) Article V, Section 1, Code proposals submitted by the Producers and Distributors Committees, August 23, 1933, Volume A for the Motion Picture Industry, National Recovery Administration files.

(***) pg. 44, Analysis of and Suggestions Concerning Revised Code, Volume A for the Motion Picture Industry, National Recovery Administration files.

(****) Article VII, Part 1 of the approved Code.

A similar suggestion regarding rules of decency and good taste to be followed by all exhibitors in advertising motion pictures advanced by the exhibitors, was handled in a similar way, and a parallel pledge of good social conduct was inserted in the approved Code (*).

9. MISCELLANEOUS PRACTICES

a. The Code provided that any exhibitor forwarding or delivering to another exhibitor a print of a motion picture at the request or upon the order of the distributor thereof should for that purpose but for that purpose only, be considered the agent of the distributor (**). This merely incorporated the customary legal relationship existing in such a case into the Code for purposes of clarification.

b. It was provided in the Code that wherever arbitration was provided for, other than arbitration as provided in the Optional Standard License Agreement of 1933, such question should be submitted to an Arbitration Board. This Board was to consist of four (4) members, two (2) to be appointed by each party to the dispute. The arbitrators named were to have no interest, direct or indirect, in the subject in dispute. In case a majority of the arbitrators were unable to reach a decision, they were empowered to select an umpire by majority vote, such umpire not to be engaged in the motion picture business. In case no umpire could be agreed upon, it was provided that the National Recovery Administration should be requested to make the selection (***).

The method of arbitration specified applied particularly to disputes arising between employers and employees in the exhibition branch of the Motion Picture Industry (****). It was used principally where employees wished to negotiate for a higher wage scale. It proved satisfactory.

(*) Article VII, Part 2 of the approved Code.

(**) Article VIII, Part 1 of the approved Code.

(***) Article VIII, Part 2 of the approved Code.

(****) Article IV - C, Part 1, Section 10 of the approved Code.

CHAPTER V

LABOR PROBLEMS IN EXHIBITION, PRODUCTION, AND DISTRIBUTION DIVISIONS OF THE MOTION PICTURE INDUSTRY

The three economic divisions of the Motion Picture Industry present an unusually complex and interesting labor situation. The labor spotlight swings from aspiring vaudeville actors who at times felt compensated if they had "cakes and coffee" and a round of applause, to ushers content with free tickets and the hand-me-down braid of a uniform, to skilled craftsmen who at times enjoyed wages of $150 a week and at other times managed as best they could on $2.00 a show; and in the center of the labor stage stand the popular stars under contract for $10,000 and more for each picture.

The rapid growth and enormous profits made in this Industry from the early part of the Twentieth Century to the business depression in 1929 resulted in these extremes. The artists through their popularity and the comparative scarcity of their numbers, and the highly skilled and strongly unionized workers through their collective bargaining powers, had obtained a high scale of wages and satisfactory working conditions. In direct contrast the unskilled such as ushers, doormen and the like, answering the lure of "show business" were poorly paid and worked long hours. This can perhaps be attributed to the constant over-supply of this labor and to lack of organization.

When the depression spread its dark shadows over the theatre, the Industry under the increasing pressure of reduced business, suddenly knew panic and felt that it faced chaos. For years no serious attention had been paid to correcting certain prevalent customs generally recognized as unsound business practice. The Industry felt a sense of immunity in view of its rapid growth and seemingly unlimited profits. At each crisis, some new invention had answered public need and given the entire industry a new impetus. But when at last income began to shrink, defective business practices stood out menacingly, bankruptcies and receiverships became numerous; and labor found itself forced to accept lower wages and to work longer hours in uncertain employment.

In early 1933, the biggest chains such as Paramount-Publix and R.K.O. were either seeking bankruptcy or being run by receivers. Theatres were operating on a week-to-week basis; hundreds were closed. Thousands were out of work. Those still employed in exhibition had to accept wage reductions as high as 50 per cent in the skilled trades; the unskilled saw their meagre wages slashed still lower. In the studios, slack production meant fewer jobs and as a result of disputes over wage scales and working conditions, several thousand on strike saw their places taken by others at lower scales.

The general labor situation is specifically described in the following extract from the report of Assistant President Louis Krouse of the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada to the 32nd

Annual convention in Louisville, Kentucky, June 4 to 8, 1934: Mr. Krouse said:

"In considering the National Industrial Recovery Act and the various Codes of Fair Competition affecting our crafts, it must be remembered that only two years ago the by-word of our Columbus Convention was 'Work at any Price', and it was not very long before it was just that -- and not a very high price at that.* * * * * * * *

"Receiverships and bankruptcies were (then in 1932) imminent. Naturally, the first and most concerted retrenchment was aimed at reduction of salaries. . . . . Hardly had the Convention closed than our general economic position began to get worse.

"From our General Office in New York City, there was immediately observed in July of 1932, duel unions gathering force throughout the country because of lower scales in the key cities. Large circuit houses were forced to work on a week-to-week notice. The stage employees of many locals took a fifteen per cent cut. The Theatre Owners Chamber of Commerce asked all unions to accept 1926 scales.

"In August of 1932, four hundred members of a single local lost their positions because a dual union was furnishing men for far lower wages. Both East and Pacific Coast unions took reductions in pay. September of 1932 saw the trade papers over the country boldly proclaiming 'Union Deals Not So Tough.' In October of 1932, we found further reductions being made by various important locals. November, a record low for stage employees was established when one of our local unions was forced to agree to work for $2.00 a show, and in Ohio and elsewhere exhibitors imported strike breakers and paid them a total booth cost of $80.00 per week as against a booth cost of $218.00 per week for union men.

"The new year of 1933 showed no abatement in our economic troubles. January saw the biggest chains, such as Paramount-Publix and R.K.O. in bankruptcy or being run by a receiver. The effect of these receiverships and bankruptcies was felt immediately. In February, 1933, we found cuts demanded by the exhibitors wherever situated. During February, in a certain state of our Union, a fifty (50) per cent cut was forced upon the majority of our local unions. March, 1933, started out with a fifteen (15) per cent cut for the receivers of R.K.O. in Minnesota.

"With the bank holiday, the exhibitors became hysterical and would talk of nothing less than a fifty per cent cut in every city throughout the United States. Indeed, there were some exhibitors whose theatres in their cities were shut down for weeks owing to their unreasonable madness and frenzy.

Only the confidence, engendered by the taking of office by President Roosevelt and his masterly handling of our general economic situation, saved us from complete financial ruin.

"After the immediate hysteria of the bank holiday, the drive for further reductions continued and in April 23 found demands on the West Coast, the Middle West and the East for still further reductions, ranging from fifteen to thirty-seven and one-half per cent, which in most places had to be granted. This was followed up in May by more reductions in Maryland still more on the West Coast. By June the Colorado situation became more serious with only ten out of thirty-five theatres in one city still union." (*)

How each class of workers fared before the Code, during the Code and since the Code became inoperative is here presented with respect to (a) Exhibition; (b) Production, and (c) Distribution.

A. EXHIBITION

1. EMPLOYMENT

The greatest volume of employment in the Industry is in the exhibition, or theatre presentation of motion pictures. Exact employment statistics for this division were not available during code formulation; nor during the period of code administration. There are reasons for this condition. The number of theatres is not constant from season to season. Theatres close their doors this week and reopen next week or months later; others are abandoned as playhouses; newly built theatres turn on lobby lights in bright invitation to the public, month by month. As a result, employment rises and falls from season to season.

For these reasons and others - employment figures and actual number of theatres elude exact determination by the Industry itself, by its alert trade press, by the United States Department of Commerce, Bureau of the Census, or even by the labor organizations directly concerned. Estimates as to the number employed in exhibition, therefore, vary from 234,000 as recorded by the Motion Picture Almanac of 1935 to 130,000 listed by the 1933 Census of American Business. Labor organizations are in general agreement on an estimate of 185,000 and this estimate is usually accepted in considering the labor problems of motion picture exhibition.

2. CLASSES OF EMPLOYEES

Employees in the exhibition of pictures are generally divided into the following five classes:

(*) Report of 1934 Convention of International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators - National Recovery Administration Files - Motion Picture Industry.

Class I. Office Employees. In this group are included house managers, advertising and publicity persons, stenographic and clerical employees.

Class II. Front of the House employees (so-called). This group represents approximately two-thirds of those employed and includes, among others, ushers, doormen, ticket-takers, cleaners and matrons. These are unskilled workers, comparatively easy to replace.

Class III. Musicians. Once a group of more than 30,000, there are probably no more than 2,000 of them now playing in motion picture theatres.

Class IV. Actor Employees. Another disappearing group.

Class V. Skilled Employees. This group includes motion picture machine operators, stage hands and maintenance men, engineers, wardrobe attendants, firemen, oilers, electricians, carpenters.

3. UNIONIZATION OF EMPLOYEES

There is a sharp contrast in this Industry between skilled and unskilled labor. Many attempts have been made to organize the unskilled or non-craft labor but only in isolated instances have these efforts been successful. On the other side of the bargaining table, there has been for years a high degree of union organization among the skilled workers, particularly in Class V employees as herein classified. There are several strong and powerful union organizations in this class, notably:

(a) The International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada.

(b) The International Union of Operating Engineers.

(c) The International Brotherhood of Electrical Workers.

(d) The International Brotherhood of Firemen, Oilers, Helpers, Railway Roundhouse and Railway Shop Laborers.

(e) Local and regional unions of motion picture operators; organizations of stage hands in some states - not affiliated, as are the dominating skilled trade groups, with the American Federation of Labor.

The largest and most powerful of these union groups is the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, which at the present time (November, 1935) claims about 25,000 members. The international headquarters was moved from New York to Washington, D. C. during the Code period so that its international officers could maintain daily cooperation with the National Recovery Administration and with the main offices of the American Federation of Labor. The Alliance continues to operate from Washington.

This international alliance, known in the motion picture industry as the "IA" is the outgrowth of the old National Alliance of Theatrical Stage Employees - an organization that ante-dated the motion picture industry by a decade of activity. The old "National Alliance" drew its membership principally from the stage hands in vaudeville and legitimate theatres. As the "IA", this organization early entered the motion picture theatre and proceeded to organize the motion picture operator and other workers necessary to projection room and theatre operation. The present "IA" membership of 25,000 includes some members working in the production of motion pictures, such as camera-men, sound men, laboratory mechanics and other studio workers. This situation gives the "IA" something of the character of an industrial union.

The International Union of Operating Engineers is a craft union. About 2,500 of the total membership are employed in theatres in charge of heating, cooling and ventilating systems. In addition to these 2,500 men, there are also engaged in the motion picture industry approximately 1,500 non-union engineers. In some situations, the union of Operating Engineers conflicts with the International Brotherhood of Electrical Workers and the International Brotherhood of Firemen, Oilers, Helpers, Railway Roundhouse and Railway Shop laborers which claim jurisdiction over certain types of work.

4. CONDITIONS AND CODE PROVISIONS AFFECTING SKILLED AND UNSKILLED LABOR.

During the depression, union wages had suffered under steady downward pressure; working hours were long; working conditions had surrendered many of the gains won before 1930. (*)

The files in the office of Sol A. Rosenblatt, who, as Deputy Administrator, supervised the drafting of the Code of Fair Competition for the Motion Picture Industry and, as Division Administrator, was responsible not only for the Code's administration but for Code compliance and enforcement; the transcripts of NRA hearings on code organizationl editorial and special articles in the trade papers - all - show a common effort by the representatives of the various union organizations, the producers and exhibitors to write into the motion picture code favorable conditions for labor.

These documents and attendent correspondence disclose a common interest to prevent any further demoralization of working conditions for organized labor and to bring the standards of un-organized skilled workmen up to this level. The record shows that employee and employer worked through NRA machinery in sympathetic understanding in this effort to standardize wages, reduce hours and increase employment.

The wage and hour situation of employees in the period preceding the Code and the standardizations sought by Code provisions are now

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(*) Report of Louis Krouse, Assistant President, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators to 32nd Convention of Alliance - 1934.

presented, briefly, first with respect to office employees; secondly, "front of the house" employees, thirdly, the musicians and actors, and finally because of the extended consideration necessary to a full understanding of the labor situation, the skilled employees.

a. Office Employees

Office employees have been and are today almost wholly unorganized. House managers and the advertising and publicity employees are included in this group. As usual with this type of employee, these executives and their assistants in the pre-code days worked unrestricted hours, but, to compensate for that, appear in most instances to have been well paid. Under the Code, these employees were limited to 40 hours a week unless they received at least $35.00 a week. (*) Their assistants, in pre-code days, averaged from $18.00 to $35.00 a week with no limit upon hours. Under the Code, the 40 hour week applied to these workers.

Exhibitors contended that unrestricted hours were justified for this class of employees because of the nature of their work and to provide opportunity to train these men for positions either in charge of publicity or as theatre managers. During the code administration period there was little compliance and enforcement difficulty with the hours provisions for this class.

b. "Front of the House" Employees

The "front of the house" employees - ushers, doormen, ticket-takers, ticket-sellers, cleaners, etc., - worked in pre-code days from 40 to 80 hours a week. The Code limited these employees to a maximum 40 hour week. (**)

It was not unusual in the pre-code days for ushers and ticket-takers to work for nothing more than the flattery of free admission tickets. There was a scale, however, for this class in some cities that ran up to $15.00 a week. In some strongly organized union labor communities, these unskilled workers had succeeded in organizing and had negotiated successfully with their theatres for better wages and improved working conditions. Over many years, attempts had been made to organize these workers but except in these isolated cases, all efforts failed. Except for cleaners, matrons, and watchmen, most of the employees in this class are from 16 to 25 years old. A rapid turnover in employment is the rule.

The Code standardized a minimum of wages for this mobile class, within specified population differentials. Code wages and hours provisions are credited generally with having resulted in an increase in employment for this group and a shortening of hours with little or no resultant loss of earnings. Only scattered complaints of non-compliance

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(*) Article IV, Division C, Part 1, Section 2 of the approved Code.

(**) Article IV, Division C, Part 1, Section 2 of the approved Code.

with wages and hours provisions are found in the National Recovery Administration compliance records. It has been impossible to get any information as to conditions in this group since the Motion Picture Code became inoperative.

The Code set up these wage provisions for these workers:

"With respect to employees reguarly employed as ticket-sellers, doormen, ushers, cleaners, matrons, watchmen, attendants, porters, and office help, such employees shall receive not less than a twenty per cent (20%) increase over the wage paid to them as of August 1, 1933, in cities and places having a population of less than 5,000, provided that this shall not require a wage for these employees in excess of twenty-five cents (25) per hour." (*)

"With respect to employees reguarly employed as ticket-sellers, doormen, cleaners, matrons, watchmen, attendants, porters, and office help, such employees shall receive not less than thirty (30) cents per hour in cities and places having a population of more than 15,000 and less than 500,000, and not less than thirty-five (35) cents per hour in cities and towns having a population of more than 500,000." (**)

"With respect to employees reguarly employed as ushers, in cities and places having a population over 15,000, such employees shall receive a wage of not less than twenty-five (25) cents per hour." (***)

c. Sound and the Musician

Another labor provision of the Code which presented few difficulties governed musicians.

The musician once had an important place in the motion picture theatre; that was before the "talkies" replaced the silent screen. Sound, with its similitude of life in action and spoken word and its inclusion of orchestral performance drove the musician from the theatre. His employment was almost completely eliminated. The musician who survives finds work only in conjunction with vaudeville and other stage presentations.

More than 30,000 musicians had been employed in the exhibition of motion pictures in the days before audiences heard the voices of Al Jolson, Martinelli and a gypsy chorus in the first experimental, yet successful, sound pictures. The "talkies" had arrived. The musician

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(*) Article IV, Division C, Part 1, Section 3 of the approved Code.

(**) Article IV, Division C, Part 1, Section 4 of the approved Code.

(***) Article IV, Division C, Part 1, Section 5 of the approved Code.

slowly departed. Today, it is estimated not more than 2,000 musicians are employed in the motion picture theatres of this country.

At the request of the American Federation of Musicians, a labor provision broad and general in its terms, was included in the Code. This provision was acceptable to the exhibitors; in code administration, no difficulties arose over this provision. Section 9 of Article IV, C, Part 1 of the approved Code read:

> "By reason of the professional character of their employment, the minimum wages and maximum hours of employment of employees performing the duties of musicians shall, as heretofore, be established by prevailing labor agreements, understandings, or practices."

d. Actor Employees

Class IV employees are the Actors. Usually they are employed in presentation and vaudeville entertainment in connection with picture showings. There are probably not more than 5,000 of them now on the stages of motion picture houses. As in the case of the musician, the actor also lost his old importance in the motion picture house when "sound" came in.

The future of vaudeville presentation in motion picture theatres is uncertain. Less than a decade ago, the actor could crown a lifetime of ambitious work with established national success if he could win a rousing round of applause on the stage of the old Palace Theatre on Broadway - the mecca of the vaudeville artist. Now, as everywhere, pictures are first, even in the Palace. Amateur Hours, for the moment (November, 1935) are a popular enthusiasm of presentation theatre audiences and troupes of talented and near-talented actors and singers are ambitiously seeking through such opportunity to revive motion picture vaudeville. There is, on the evidence of the daily and weekly trade press of the Industry, a presently increasing demand for "name acts" occasioned by the current popularity of personalities from radio and motion picture studios.

In a survey of the vaudeville situation in the motion picture exhibition field, the Motion Picture Herald (June, 1935 issue) makes this comment:

> "One of the severest blows dealt the cause of vaudeville in recent years lies in the record of the exclusive film policy of Loew's Capital on Broadway (New York) where 'China Seas' completed three successful weeks when stage shows were eliminated for the first time since the theatre was opened in 1919.
>
> "The Loew's Circuit, and others, believe that with a large percentage of meritorious films being released, there will be no need for bolstering stage shows even on Broadway; while the booking agents blame the increased trend to theatre pooling and the accompanying decrease in competition as well as the labor situation for accelerating the back-to-film movement.

"Considered highly indicative of the general trend is that Loew's five years ago scheduled stage shows in 36 of its theatres as regular policy and last year, with fluctuations, in twelve (12), this year only three theatres will play vaudeville regularly: Loew's State in New York; the Centruy in Baltimore and the Fox in Washington, on weekly stands."

The actor's decline began when the motion pciture caught public imagination sufficiently to keep the audience in its seats, instead of sending them home. When first introduced, motion pictures were used in the old-time vaudeville theatres not as an added attraction, but as a novelty at the end of full bill of vaudeville acts. There were, at that time, many vaudeville circuits. Traveling companies had no difficulty in securing 52 weeks of work in a year. The growing popularity of the motion picture gradually reversed this situation; the phantoms of the screen became predominant; the living actor, became a fleeting figure.

In pre-NRA Code days, wages for vaudeville troupers in motion picture theatres, ranged from "coffee and cakes" to thousands of dollars a week for "name acts." It is still common practice in large cities where stage presentations continue to give five shows a day on week days and, where permitted, three shows on Sunday. Although acts are seldom on the stage more than ten minutes for each show, additional time must be spent by players in preparing for the show and in removing make-up and donning street clothes after the show so that actual working time has been estimated to be anywhere from 50 to 70 hours a week.

To correct conditions both as to hours and wages, Part 2 of Article IV, Division C of the Motion Picture Code set up elaborate protective provisions for actors and the heretofore neglected chorus. Rehearsal periods were restricted for principals and chorus. Rehersals for the chorus were limited to 40 hours in any one week. Salaries were established and minimums defined: $40 a week, net, after any deductions, for performers with more than two years theatrical experience; $25 a week net, for those with less than two years theatrical experience; $7.50 net "in cash per day to performers employed on a per diem basis for each theatre in which such performer appears." Transportation, including sleeper and baggage charges, was for the first time recognized and established as a proper obligation of the employer. Wigs, shoes, tights, stockings, costumes and other necessary stage wardrobe also became an obligation of the employer with respect to performers receiving less than $50 a week. Lay-offs and rest periods were also for the first time defined and established.

These were far-reaching reforms in improving the lot of the actor and the chorus girl. To check violations by subterfuge, it became necessary in March, 1935 to amend the Code (*) and thus close up loopholes for evasion, and circumvent practices which are described in the following six pertinent observations in the report of William P. Farnsworth as Deputy Administrator.

(1) "Exhibitors have in some instances contracted with

(*) See Deputy's Report to the National Industrial Recovery Board submitting Amendment No. 4 to Approved Code No. 124, dated March 4, 1935.

third parties for the service of theatre employees for the definite purpose of avoiding payment of Code wages for being bound by Code hours . . . . . The amendment provides that Exhibitors who contract for such services in the future must require the contractor to agree in the contract to pay the wages and observe the hours set forth in the Code." (*)

(2) The definition of actor employees was changed to exclude specific mention of "rep shows, tab shows, tent shows, medicine shows and show boats", confining the definition to "permanent and traveling companies of artists playing presentation and vaudeville houses".

The evil detected and the remedy sought are stated by Deputy Administrator Farnsworth as follows:

"No difficulties have arisen with regard to these excluded types of shows, nor is the amendment designed to include them within the Code at the present time. However, some presentation and vaudeville companies have adopted such names as "tab shows" or "show boats" and sought by such means to escape compliance with the Code. The employers of performers in these companies, who have sought by these means to defeat the purposes of the Code, are actually the 'presentation and vaudeville companies' referred to and described in the Code provisions as they now exist. There is nowhere in existence specific definitions of the various terms used in describing the types of shows exempted from the Code provision except that the Code provision itself defines the terms 'as these terms are understood in the theatre'. The definition resulted in considerable confusion and subterfuge.

"The amendment will improve the standards of labor of the employees in those shows in which the employer used one of the above mentioned terms to circumvent compliance with the Code, since the object in the use of such terms was to pay the employees less than the minimum wages and to require the performers to work more than the maximum hours provided in the Code. The amendment will also increase the purchasing power of the employees referred to above, and will tend to make necessary the employment of persons not now employed." (**)

(3) A further amendment to increase earnings and purchasing power was approved to require "the payment to principals of one half of the weekly wage for each week or part thereof that the rehearsal extends beyond two weeks".

(4) On the $7.50 per diem class of actors, the Deputy Administrator reports in justifying another change in wording made in

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(*) Pages 2 and 3, Deputy's Report to the National Industrial Recovery Board submitting Amendment No. 4 to Approved Code No. 124, dated March 4, 1935.

(**) Page 3, Deputy's Report to the National Industrial Recovery Board submitting Amendment No. 4 to Approved Code No. 124, dated March 4, 1935.

Amendment No. 4:

"The original Code provision for which this amendment is proposed as a substitute provided for a $7.50 per diem rate and was intended to accomplish the same result as the amendment, but it has been found that certain performers were thereafter required by their employers to play in more than one theatre in a single day and that the Code provision as worded was not sufficiently clear to indicate this intention of the original provision.

"In a subsequent provision of the Code, applicable to principals, it is provided that: Owing to the peculiar nature of the stage presentation and vaudeville business and the conditions prevailing therein, the changing nature of the entertainment, etc., it is recognized that it is impossible to fix the maximum hours per week of artists appearing in such theatres. Since no maximum hours are fixed, the injustice of permitting employers to require that principals appear in more than one theatre in one day and be compensated only the minimum rate, is apparent. The amendment will definitely improve the standards of labor of the performers . . . . . ." (*)

(5) Layoffs. On this subject, the Deputy Administrator reports:

"This ... amendment clarifies that portion of the Code which provides that a chorus person be released from work with pay one day out of every seven days. Lay-off periods were rare and uncertain before the adoption of the Code and the original Code provision coupled with this amendment will definitely improve the standards of labor for chorus persons." (**)

(6) Clear provision for paying actors or chorus persons in cash for transportation was next found necessary, the Deputy Administrator reporting that:-

"In a number of instances in the past, employers have taken a show and chorus on the road to different cities in the United States and if the show did not prove a success, it became the practice of employers, either because of insufficient finances or for other reasons, to dismiss the chorus persons on the road, and provide no arrangement for the transportation of such chorus persons back to the point or origin. This practice frequently resulted in chorus persons being stranded without funds, some-

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(*) Page 4, Deputy's Report to the National Industrial Recovery Board submitting Amendment No. 4 to Approved Code No. 124, dated March 4, 1935.

(**) Page 5, Deputy's Report to the National Industrial Recovery Board submitting Amendment No. 4 to Approved Code No. 124, dated March 4, 1935.

times great distances from their homes or point of possible reemployment." (*)

Despite the condition of evasion emphasized by the Deputy Administrator, the compliance records and correspondence files in the National Recovery Administration disclose but few references to violations of the actor and chorus sections of the Code. The conditions remedied appear to have been common knowledge in the industry.

e. The Major Problem - Skilled Labor

Major attention was given throughout the period of Code administration to the problems of Class V of Exhibition employees - the skilled workers. This group was defined in the Code as including bill posters, carpenters, electrical workers, engineers, firemen, motion picture machine operators, oilers, painters, theatrical stage employees, theatrical wardrobe attendants, and other skilled mechanics and artisans directly and regularly employed by the exhibitors. (**)

An advance of far reaching economic importance to each division of the Industry was made through the Code by the agreement between the employer-exhibitors and the skilled workers of this Class III whereby the employees agreed not to strike and the exhibitors agreed not to lockout skilled workers.(***)Strikes and lockouts - a constantly recurring economic disturbance in theatre operation - practically disappeared during the period of Code administration.

In public addresses before conventions of motion picture exhibitors and theatre owners, at Atlantic City, September 1934 and in New Orleans, February, 1935, Division Administrator Sol A. Rosenblatt, speaking as Administrator of the Motion Picture Industry Code and as National Director of Compliance and Enforcement for NRA said that, as a result of this unusual agreement, there had been less labor trouble in motion picture theatres than at any previous time and that the motion picture industry had experienced less labor strife than any other comparable great industry.(****)

The structure upon which labor relations moved to this result was built up through a series of scrupulously worded provisions in the Code that sought to prevent (1) discharge of workers, (2) doubling of duties to circumvent employment or re-employment, (3) reduction in pay below the rate prevailing upon a specified day preceding the approval of the Code,

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(*) Page 6, Deputy's Report to the National Industrial Recovery Board submitting Amendment No. 4 to Approved Code No. 124, dated March 4, 1935

(**) Article IV, Division C, Part 1, Section 6 (a) of approved Code.

(***) Article IV, Division C, Part 1, Section 6 (d) of approved Code.

(****) Addresses of Sol A. Rosenblatt, Division Administrator - National Recovery Administration Files - Motion Picture Industry.

and (4) a regard for the earning capacity of each theatre involved so that wage scales might bear a proportionate relationship and thus set up an equitable basis of competition with respect to labor costs.

These provisions are of sufficient general interest that it is believed that they should be quoted in full in this report.

"Employees associated with organizations of or performing the duties of bill-posters, carpenters, electrical workers, engineers, firemen, motion picture machine operators, oilers, painters, theatrical stage employees, theatrical wardrobe attendants, or other skilled mechanics and articans, who are directly and regularly employed by the Exhibitors, shall receive not less than the minimum wage and work no longer than the maximum number of hours per week which were in force as of August 23, 1933, as the prevailing scale of wages and maximum number of hours of labor by organizations of any of such employees affiliated with the American Federation of Labor with respect to their respective type of work in a particular class of theatre or theatres in a particular location in a particular community, and such scales and hours of labor with respect to any of such employees in such community shall be deemed to be, and hereby are declared to be, the minimum scale of wages and maximum number of hours with respect to all of such employees in such communities in such class of theatre or theatres. (*)

"In the event, however, that there exist in the particular community organizations of such employees above mentioned, members of which were directly and regularly employed by the Exhibitor or Exhibitors on August 23, 1933, and which organizations are affiliated as above set forth, and (1) no prevailing scale of wages and maximum number of hours for such employees exist in such community with respect to such employees, or (2) any dispute should arise as to what is a minimum scale of wages or the maximum number of hours of labor with respect to any of such employees for a particular class of theatre or theatres in any particular community than and in either of those events such disputes shall be determined as follows: (**)

"(1) If the question at issue arises with an organization of such employees affiliated with the American Federation of Labor, then a representative appointed by the National President of such affiliated organization, together with a representative appointed by the Exhibitors, shall examine into the facts and determine the existing minimum scale of wages and maximum number of hours of labor for such class of theatre or theatres in such particular locality, and in the event they cannot agree upon the same, they shall mutually designate an impartial third person who shall be empowered to sit with such

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(*) Article IV, Division C, Part 1, Section 6 (a) of approved Code.

(**) Article IV, Division C, Part 1, Section 6 (b) of approved Code.

representatives, review the facts and finally determine such dispute, with the proviso, however that in the event such representatives cannot mutually agree upon such third person, then the Administrator shall designate such third person: or (*)

"(2) If the question at issue arises with unorganized employees, or with an organization of such employees not affiliated with the American Federation of Labor, and if in said community there exist members of such affiliated organization directly and regularly employed by an Exhibitor or Exhibitors, then a representative of such unorganized employees, or, as the case may be, a representative appointed by the President of such unaffiliated organization or both, together with a representative appointed by the National President of such affiliated organization above referred to, together with a representative appointed by the Exhibitors, shall examine into the facts and unanimously determine the existing scale of wages and maximum number of hours of labor for such class of theatre or theatres in such praticular community, and in the event they cannot unanimously agree upon the same, they shall mutually designate an impartial person who shall be empowered to sit with such representatives, review the facts, and finally determine such dispute, with the proviso, however, that in the event such representatives cannot mutually agree upon such impartial person, then the Administrator shall designate such impartial person; or (**)

"(3) If the question at issue arises with unorganized employees or with an organization of such employees not affiliated with the American Federation of Labor and not subject to the foregoing provisions of subparagraphs (1) and (2) or paragraph (b) hereof, then a representative of the President of such unaffiliated organization, or both together, with a representative appointed by the Exhibitors, shall examine into the facts and determine the existing minimum scale of wages and maximum hours of labor, for such class of theatre or theatres in such particular locality, and in the event they cannot agree upon the same, they shall mutually designate an impartial person who shall be empowered to sit with such representatives, review the facts and finally determine such dispute, with the proviso, however, that in the event such representatives cannot mutually agree upon such impartial person, then the Administrator shall designate such impartial person. (***)

"Pending the determination of any such dispute, the rate of wages then paid the Exhibitor in such theatre or theatres in such community, and the maximum number of hours, then in force (if not more than the hours provided for in this Code) shall not be changed so as to decrease wages or increase hours. (****)

(*) Article IV, Division C, Part 1, Section 6 (b) of approved Code.

(**) Article IV, Division C, Part 1, Section 6 (b) (2) of approved Code

(***) Article IV, Division C, Part 1, Section 6 (b) (3) of approved Code

(****) Article IV, Division C, Part 1, Section 6 (c) of approved Code.

"In order to effectuate the foregoing provisions of this Section 6 hereof, and pending the determination of any disputes as above specified, the employees herein embraced and provided for agree that they shall not strike, and the Exhibitors agree that they shall not lock out such employees. (*)

"In no event shall the duties of any of the employees hereinabove specified in Section 6 (a) directly and regularly employed by the Exhibitors as of August 23, 1933, be increased so as to decrease the number of such employees employed in any theatre or theatres in any community, except by mutual consent. (**)

"With respect to any employee not hereinbefore provided for, such empolyee when directly and regularly employed by the Exhibitors shall be paid not less than forty (40) cents per hours. (***)

"With respect to disputes arising between employees and employers in the Exhibition branch of the Motion Picture Industry, the parties pledge themselves to attempt to arbitrate all such disputes. (****)

"The Administrator after such notice and hearing as he shall prescribe may revise or modify any determination of any dispute pursuant to Section 6 of Part 1 of Division C of this Article IV." (*****)

The majority, by far, of all complaints with regard to skilled labor originated with moving picture machine operators and as a result the Code provisions were interpreted and administered principally for this class. The problems of this class will be taken up in detail in the following section.

5. MOTION PICTURE MACHINE OPERATORS

Before NRA, members of the "IA" (The International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada) were working from 35 to 50 hours a week at scales ranging from $25.00 to $125.00 a week.

Unaffiliated union operators in this pre-code period generally received scales ranging from 20 to 30 per cent less than the "IA" scales and worked longer hours. Non-union operators worked even longer hours than

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(*) Article IV, Division C, Part 1, Section 6 (d) of approved Code.

(**) Article IV, Division C, Part 1, Section 7 of approved Code.

(***) Article IV, Division C, Part 1, Section 8 of approved Code.

(****) Article IV, Division C, Part 1, Section 9 of approved Code.

(*****) Article IV, Division C, Part 1, Section 11 of approved Code.

these two groups and were paid as low as $10 a week.

a. Types of Violations of Code Provisions.

The types of violations of these various protective provisions which called for special attention fell into the following catagories:

(1) Complaints made by local unions affiliated with the American Federation of Labor that their members who had been working in a theatre on August 23, 1933, subsequently had had their wages reduced and were now receiving less than the scale of August 23, 1933.

Invariably this involved a dispute as to what the actual wage was on August 23, 1933 and the settlement of complaints of this type involved the production of proper evidence by the contending parties and a determination of the actual facts. The principal cases of this type were the St. Louis, Mo., (*) and the Central States Theatre Corporation, Mason City, Iowa (*) cases.

(2) Complaints made by local unions affiliated with the American Federation of Labor that in other theatres of the same class in their community, employees who were members of competing unions, or company unions, or were non-union employees, were receiving a lower scale of wages than the prevailing American Federation of Labor scale as of August 23, 1933.

In these cases, it was invariably necessary to set up a fact-finding committee to determine the dispute as to the classification of the theatres. This committee was composed of representatives of the employer, his employees and the union affiliated with the American Federation of Labor.

The fact-finding committee first investigated the classification of theatres and rates of wages which were paid on August 23, 1933 to the members of the union affiliated with the American Federation of Labor. The committee then compared the theatres against which complaint had been made with the theatre which, on August 23, 1933, employed American Federation of Labor members and attempted to agree on a proper classification on the basis of the method which had been used in classifying the American Federation of Labor theatres on August 23, 1933.

In most cases, this procedure involved taking into consideration the location of the theatres, the seating capacity, the prices of admission charged and the run of pictures shown in the theatre. A thorough explanation of this procedure is contained in Field Letter No. 181 (**).

An important advance in labor negotiations is to be noted in the fact that these factors were studied in order to determine as closely as possible the relative potential possibilities of profit in each situation so that the wage scales of the employees might bear this same relationship and thus provide an equitable basis of competition among employers with respect to labor costs.

(*) Motion Picture Industry Code Labor Decisions, page 3 and page 16, National Recovery Administration Files.

(**) National Recovery Administration Files for Compliance Division - Field Letters sent to State Offices - No. 181.

When a committee of this type found it impossible unanimously to agree on these points, it was then provided in the Code that the committee members should either mutually agree upon an impartial person to determine the dispute or that the Administrator should appoint the impartial person. This was done in many instances.

As soon as the degree of comparability between the theatres had been agreed upon, wage scales were then established having the same degree of comparability and based upon the scales actually paid in a comparable theatre or theatres on August 23, 1933.

A majority of the cases handled fell into this catagory. Whenever it became necessary to appoint an impartial person, it was invariably possible to arrive at a solution agreeable to all parties in controversy.

(d) The New York Situation.

In New York City, labor problems of threatening import arose under this classification of complaints and attracted wide attention, as did a similar situation in Pittsburgh, because of the number of theatres and the issues involved.

Labor disturbances in New York continued through the early part of 1934 and the particular situation with respect to skilled employees required the special personal interventions of Sol A. Rosenblatt, the Division Administrator. As early as January 6, 1934 (*), the Regional Labor Board in New York was considering a complaint by Local No. 306 of the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada that certain theatres had violated Section 7-a of the National Industrial Recovery Act and had also violated Article IV, Division C, Part 1, Section 6 and 7 of the Motion Picture Industry Code.

The situation in New York City was very complicated. In addition to Local No. 306, which was affiliated with the American Federation of Labor, there were four other motion picture operators' unions, one of which had been characterized by a New York Court as a company union.

Further complicating the situation was the fact that Local No. 306 had no established minimum wage scales; theatres which unquestionable fell in the same classification were paying quite varying wages under contract with Local No. 306.

The situation was further complicated by this fact: the Independent Theatre Owners' Association Inc., of New York, operating between 250 and 420 motion picture houses in Greater New York City, claiming dissatisfaction with Local No. 306 and the Empire State Motion Picture Operators Union, caused the creation of the Allied Motion Picture Operators Union, Inc., and entered into a ten year contract with Allied (identified by the New

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(*) Letters of Division Administrator, January 6, 1934 and January 22, 1934 - New York Situation - Motion Picture Industry Code - National Recovery Administration Files.

York Courts as a company union) (*) stipulating that Allied's projectionists exclusively were to be employed. This caused the discharge of Local No. 306 projectionists and in some instances re-employment of Allied men at lower wages; and in other instances no replacements were made at all (*). Threatened local warfare would appear to have been prevented by the action of the National Recovery Administration.

In June 1934, the Division Administrator appointed a fact-finding committee head by Major L. E. Thompson of the RKO Circuit and on which the various employer and labor factions were represented for the purpose of arriving at a scale in accordance with the provisions of Part B, of Section 6 of the Code.

The fact-finding committee under Major Thompson attacked the problem assiduously in an effort to compose the differences. Considerable headway was made along these lines and a general plan for settling the problem had been worked out, but specific points still had to be agreed upon, particularly a basic hourly wage from which to graduate wage scales for the various classes of theatres. In December 1934, a public hearing was arranged to consider an amendment to the Code which would settle the New York problem. Notices of this Hearing, the proposed amendment and the stenographic report are contained in the Motion Picture Industry files of the National Recovery Administration.

Major Thompson's committee collected data on both employment, booth costs, admission prices, seating capacity and the run of pictures in each of 436 theatres out of the total of 506 theatres in New York. The report filed with the National Recovery Administration showed that the hourly rate varied from 22 cents an hour for non-union labor up to $4.25 per man per hour in deluxe union theatres. The schedules proposed by this committee called for a 30 hour week in order to spread employment and a minimum booth cost for motion picture machine operators of $60 a week, this scale to exist for ten years subject to revision at stated intervals, but not sooner than two years after enactment.

Disagreements arose at the public hearing held on February 1, 1935 bringing out factional differences among union representatives. Since the proposed schedule would lower the total weekly booth cost from $89,473 to $67,453 some Union representatives, while agreeing to the shortening of hours, would not agree to a corresponding decrease in wages. It was maintained that the employers were not contributing to the financial sacrifice which would be made by the employee for the loss of wages by reason of working only 30 hours per week.

Several counter proposals were offered at this hearing (**) and it was decided to revise the proposed amendment and call another public hearing. The Schecter decision had been handed down by the United States

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(*) Decision of Justice Collins in Sherman v. Abeles, New York. National Recovery Administration Files - Motion Picture Industry - New York Labor Conditions.

(**) National Recovery Administration Files - New York Situation, Motion Picture Industry - Hearing of February 1, 1935.

Supreme Court before this second hearing could be held. Reports in the daily trade press of the Industry disclosed that since May 27, 1935, violence had broken out in New York; the company union remains a factor on the scene and union difficulties have not been ironed out and no wage scales established.

(b) The Pittsburgh Case.

The Other important situation developed in Pittsburgh where 100 theatres in and around the city were involved.

In this situation the impartial arbitrator named by the National Recovery Administration did not readily reach a solution which was agreeable to the majority of exhibitors and employees.

However, the Division Administrator's office granted any exhibitor or employee who felt that an unfair determination had been made the right to represent his case and to have his determination revised or modified as provided for in the Code (*) if the facts warranted.

To assist in the review of these cases, an exhibitor-labor committee was set up in Pittsburgh. This committee made a careful study of the situation in and around Pittsburgh. The National Recovery Administration cooperated with this committee, sending an Assistant Deputy Administrator to Pittsburgh. In this mediation, more than 25 per cent of the cases were settled to the satisfaction of the parties concerned.

It was planned by the Division Administrator at the time of the Schechter decision made the Code inoperative to use this same procedure in Los Angeles where a similar situation existed.

(3) Another frequent type of complaint came from non-union or unaffiliated employees who alleged that they were not receiving the scale of wages provided for in the Code even though such scales were established by trade agreement in the community. These situations were handled in the same manner as outlined in Field Letter No. 181, Compliance Division, National Recovery Administration.

(4) A fourth type of complaint came from employees who alleged that although they were receiving the minimum scale of wages provided for in the Code, they were unable to negotiate with their employer for better conditions.

It should be noted here that the provisions of Section 10 of the Code stated that the employers and employees must attempt to arbitrate. In cases of this kind, in order to prevent strikes or lockouts resulting from the dispute, the Division Administrator's office used its influence with employers and employees to encourage arbitration and frequently offered the services of an Assistant Deputy Administrator, assigned to these labor complaints, as impartial arbitrator. Although the history up to 1933 is replete strikes and lockouts, the period of the Code was practically free of such disturbances.

(*) Article IV, Division C, Part 1, Section 11 of approved Code.

(5) Next in importance were complaints from union organizations that a reduction in skilled employees had been so made as to increase the duties of those who remained in employment.

These disputes were usually settled under the mutual consent provisions of the Code labor conditions, through correspondence from the Division Administrator's office and by personal intervention through an Assistant Deputy Administrator. The Motion Picture Industry files of the National Recovery Administration disclose that the following methods were used by exhibitors found in violation of the pertinent code provisions:

(a) Stage hands or maintenance employees were discharged on the claim made that their duties no longer existed. In many cases it was found that these duties had been transferred to unskilled employees. There was much difficulty in determining just action in such disputes.

(b) Where employers were working two men on a shift, the time of these men was cut in half, leaving one man on a shift. Thus, although there was an increase in the duties of the individual employee, there was no actual reduction in the number of such employees. This procedure was adjudged to be a clear violation of the labor section of the Code.

(c) Duties of another class were transferred to skilled employees causing a jurisdictional dispute, thus beclouding the issue.

(d) A theatre changed hands; the new owner raised the question that this interruption in continuity of management removed the employees from the protection of this section of the Code.

(e) A theatre was closed and later reopened by the same management and the claim was immediately made that this situation also removed the employees from the protection of the Code.

(f) A sixth type of complaint came from non-union employees in communities where no organization affiliated with the American Federation of Labor existed on August 23, 1933. The usual complaint here was that these employees were not receiving the scale of wages provided in the Code. These situations were taken care of by the provision of the Code which stated that such employees should receive not less than 40¢ per hour.

(g) Another series of complaints came from members of unions affiliated with the American Federation of Labor, stating that the reduction in their hours as provided for in Section 2 (that no employees shall work more than 40 hours in one week) resulted in a lower weekly wage. Investigation prior to the formulation of the Code had indicated that the average hours of employees of this type affiliated with the American Federation of Labor were slightly over 40 so that the average reduction in weekly wages which would result was less than an hour's wage. In most of these cases the employees, through collective bargaining, obtained equitable adjustments commensurate with the reduction in hours.

b. Improved Labor Conditions due to the Code

In his annual report to the 32nd annual convention of the International Alliance of Theatrical Stage Employees and Moving Picture Machine

Operators of the United States and Canada held in 1934, Louis Krouse, the Assistant President of the IA, asserted that the Code had increased employment among their members in 152 communities in the United States; that many wage increases had been obtained for unskilled workers and in a great many instances their hours were decreased.

From the files of the Division and Deputy Administrators in charge of the code, these evidences regarding employment have been extracted as typical examples:

Motion picture machine operators in approximately 100 theatres in and around Pittsburgh, Pa., received increased wages and shorter hours of work under the Code.

Wometco Theatres, Inc., operating five theatres in Miami and Miami Beach, Florida, increased their annual payroll approximately $8,000.

Engineers in theatres received increased hourly wages and shorter hours in Boston and New York.

Motion Picture machine operators received increased wages and shorter hours of work in Dallas, Texas; Long Beach, California, Erie, Pennsylvania; Lynn, Massachusetts; Lawrence, Kansas; Youngstown, Ohio; Centralia, Illinois; Seattle, Washington; Nashville, Tennessee; San Antonio and Tyler, Texas; Pueblo, Colorado and many other places.

Operators whose wages had been decreased in St. Louis, Missouri, won back their original scale and received restitution in the amount of $17,000.

The intervention of NRA representatives prevented strikes and lockouts and resulted in amicable adjustments being made in Centralia, Illinois; St. Louis, Missouri; Kansas City, Missouri; Boston, Massachusetts; and New York, New York. In the same manner wage reductions were prevented in New York City and St. Louis.

6. POST CODE LABOR CONDITIONS

Since the Code became inoperative it has been difficult to obtain much reliable information as to what changes in labor conditions have since taken place. The following information, however, has been received from various labor organizations by NRA during the progress of this study of the Motion Picture Industry.

The "IA" reports that most of its locals have been able to sign new contracts with their employers; and in a number of cases because of better business conditions, the members have received an increase in wages.

However, Local No. 370 of Richmond, Virginia, received notification from the theatre owners of that city a few weeks before their contracts expired on September 1, 1935, that they would have to take a 20 per cent reduction in wages. All the theatres banded together and said that unless this cut was taken, the union operators would be locked out. After many conferences, the local union agreed to a ten (10) per cent cut to prevent a lockout. The membership of Local No. 370 consists of 23 men;

a lockout would have affected stage employees and musicians affiliated with the American Federation of Labor in that city, 75 to 100 men.

Although the attempts made by the National Recovery Administration during code administration to establish wage scales in New York City were unsuccessful, there were no wage cuts. Since the Code became inoperative members of Local No. 306 of the "IA" have taken 15 per cent to 17 per cent cuts. These cuts affect from 700 to 800 men.

B. PRODUCTION

1. EMPLOYMENT

The United States Census of Manufactures for 1933 reported 19,037 employees in the production branch of the motion picture industry of which 8,260 were salaried employees and 10,777 were wage earners. This total did not include some 8,000 to 10,000 persons who from time to time work as "extras".

The same Census also reported that wages for 1933 constituted 15.4 per cent of the cost of production whereas salaries constituted 44.4 per cent. The marked difference was caused by the large salaries paid to executives, directors, stars and featured players.

2. TALENT AND PROFESSIONAL GROUPS

The development of quality pictures from the early production of short subjects which were approximately 200 feet in length to the present feature lengths sometimes reaching 10,000 feet, and the enlargement of theatres from the "empty store" variety seating 200 to the modern theatres seating 5,000 and more persons, was accompanied by the development of acting and directing as well as by tremendous technical improvements.

Today, the production of motion pictures centers about a relatively small group of personalities, such as actors, directors, writers and technicians. The removal of a single individual has often seriously delayed production until a suitable replacement could be found or developed.

a. The Problem of Excessive Salaries

New producing companies have usually found it more profitable to employ talent already developed, obtaining personalities from existing companies by offers of higher salaries. The existing companies have sought protection from this condition by placing their people on long term contracts.

However, the problem of increasing salaries was not solved by long term contracts. Competing producers desiring to acquire the services of important personalities, induced these artists to find means to break existing contracts or to become dissatisfied with their work.

At the Code formulating conferences producers contended that the control of salaries would satisfy the Industry and create employment. During the period of the depression previous to the Code, high salaries had increased while other wages had decreased and curtailment of employment had occurred.

Moreover, the Industry had just experienced increased investment requirements for sound equipment which added substantially to its heavy fixed charges. Desperate efforts were being made in 1931, 1932, and 1933 to attract patrons by quality attractions in the face of declining admission prices and decreased attendance. Salaries of stars were raised substantially higher than the average salaries commanded by the feature players of the silent screen. In the face of drastic reductions of operating expenses in other commercial enterprises, salaries of executives in the Motion Picture Industry were increased.

b. The Salaries Investigation

The reported enormous salaries paid to the child, animal, and adult stars and the executives of the motion picture world remained an unsettled problem through the Code period. An exhaustively detailed report of all executive, artistic and technical salaries was conducted by Division Administrator Sol A. Rosenblatt. President Roosevelt had directed that such an investigation be made in signing the Code on November 27, 1933. The President then wrote:

> "Because the President believes that further investigation with respect to the problems of payment of excessive compensation to executives and other employees in this industry is required, the provisions of Article V, division A, part 4 of this code are hereby suspended from operation and shall not become effective pending further report from the Administrator after investigation; and
>
> "Because the President believes that writers, authors, and dramatists are engaged in purely creative work, the provisions of article V, division B, part 5, sections 1 (c), 2, 3, 4, and 6 of this code, shall not become effective with respect to such employees; and
>
> "Because the President believes that further investigation is required with respect to problems generally affecting unfair competitive methods for the services of classes of employees of producers rendering services of an artistic, interpretative, technical, supervisory, or executive nature, the provisions of article V, division B, part 5, sections 1 (c), 2, 3, 4, and 6, of this code, are suspended from operation and shall not become effective pending further report from the Administrator, after investigation, as to whether such provisions should be indefinitely suspended, or modified, altered or changed, or become effective."

On July 7, 1934, Division Administrator Rosenblatt submitted his report, covering 125 printed pages of painstakingly detailed statistics, to the Administrator. (*) He called attention (page 1 of report) to the fact that the intent of the provisions of the Code suspended by

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(*) Report Regarding Investigation Directed to be Made by the President in his Executive Order of November 27, 1933, Approving the Code of Fair Competition for the Motion Picture Industry - National Recovery Administration Files.

order of the President were designed:

(a) To control payment of excessive salaries for services of executives and certain other employees in the motion picture industry; and

(b) To eliminate alleged unfair competitive methods utilized by one producer in securing the services of various classes of employees under contract with another producer.

Division Administrator Rosenblatt in his findings pointed out that the suspended provision dealing with excessive salaries would be undesirable, even if the Recovery Act itself did not impose limitations upon fixing maximum compensation "because it is not capable of effective administration. . . . . Leaving aside the question of social implications (page 9 of report) a star or executive is worth as much as the public can be led to think he is worth by paying to see his offerings. . .It is therefore recommended (page 10 of report) that the provisions as now contained in the code dealing with the payment of excessive salaries be indefinitely suspended."

The provisions of Article V, division b, part 5, sections 4 and 6 of the Code concerned the method of securing stars and other employees by competing employers. The Division Administrator recommended that the President's suspension of this section be indefinitely continued, making this comment

"The provisions of this entire section are based upon the assumption that while an artist may be born, in effect he has to be made by the efforts of the producer before his talents have any unusual commercial value. Careful training, proper casting in proper parts, and skillful and expensive advertising are all considered important contributing factors in developing a star to a point where his services command substantial compensation. In short, the producer maintains that he compensates an artist for his services in two ways; First, through the actual payment of salaries; and second, through the professional standing which the artist secures as the result of intelligent direction and proper casting. It is on the contention that this latter type of compensation in many ways is of more real value to the artist than the former, that the producer maintains he is entitled to some machinery which will tend to protect his goodwill value in the artist.

"On the other hand, the employees affected by this provision oppose its application upon the ground that such provision will tend to limit the compensation which their services may command in the future; further, that such provisions impair their right of negotiation while completely free from any contractual obligations whatsoever."

Specifically, Division Administrator Rosenblatt found that while one individual artist, an actor, was under contract calling for $25,000 a week, this actor's annual earnings in 1933 totaled only $76,-656.66; that while others were rated at $10,000 a picture and some at the rate of $1,200 a week, the average compensation for 812 artists listed in this special study was $2,048.61 per employment.

As to the value of the services of artists and like high salaried employees, the Rosenblatt report (page 5, column 2) remarked significantly:

> "In the first place, and as a matter of principle, no salary is too high or excessive if the picture produced by the individual receiving the salary meets with unusual public favor as a result of unique direction or artistry. Such a picture may continue to earn large sums after the charges for the services which produced it have been absorbed. On the other hand, the reverse may be true. Public popularity of artists is a flimsy and perishable product. It is dependent upon the vagaries of public favor. A screen personality may be a popular hero today and forgotten tomorrow. Moreover, it is difficult for executives to determine with even a reasonable degree of certainty the extent of the contribution made to a motion picture by the author, director, actor, scenic artist, photographer, publicity agent, or any one of a large number of other individuals who contribute to its creation and final presentation to the public.
>
> These imponderables make it difficult but not inherently impossible for management to maintain a reasonable adjustment between income and outlay for salary payments to executives and artists. The difficulties encountered on this score are not limited to the motion picture industry; they are common in one degree or another in every commercial enterprise whose existence is dependent upon the whims of public favor.
>
> Granting all of the legitimate reasons that make for comparatively high salaries, as well as giving full weight to the difficulties encountered by management in setting proper salary standards in the industry, the fact remains that all available evidence indicates that primary gross salary ranges in the motion picture industry have gone beyond any rational standard of compensation, i.e., based upon a percentage of the receipts representing the contribution to the picture. The basic reasons for the failure on the part of management in the adjustment of salary payments must therefore be sought for in some other quarters."

c. <u>The Agency Committee</u>

Closely allied to the problem of excessive salaries was the question of agents.

Producers complained that agents were constantly engaged in demoralizing artists; that agents fomented discord and dissatisfaction in the minds of players for the sole purpose of earning a commission. Producers were incensed over the apparent success of agents in securing large increases in salaries for their clients in the face of decreasing revenues and the virtual bankruptcy of many members of the Industry. Hollywood was in a constant nervous state as a result of these enticements and offers.

The producers had attempted to regulate these practices through the Academy of Motion Picture Arts and Sciences which had promulgated a plan for such regulation some eight months previous to the hearings before the National Recovery Administration. Max D. Steuer speaking in behalf of the agents at the National Administration hearings (*) claimed that the Academy which had formulated the provisions was not truly representative of agents. Deputy Administrator Rosenblatt's suggestion that any regulations in the Code be administered by a Code Authority was agreeable to Mr. Steuer who insisted however that the authority selected to administer the provisions be fairly representative.(*)

Article V, Division B, Part 4, Section 2 of the Motion Picture Code established an Agency Committee consisting of ten members, five of whom were to be producers or producers' representatives named by the Code Authority, and the other five to consist of one agent, one actor, one writer, one director and one technician, who were selected by the National Recovery Administration from nominations as to each class named in such suitable manner as prescribed by the Administrator.

Producers were restricted by the Code from directly or indirectly transacting business with an agent who had been found guilty of extending gifts, or of enticing employees by misrepresentation, or of having violated any section of the pertinent article of the code. The Agency Committee was to recommend to the Administrator uniform terms and procedure for registering all agents with whom producers might deal. These recommendations were to be submitted to the Administrator for approval or modification.

On September 27, 1934, the Agency Committee submitted its suggestions for rules for fair practice. A public hearing was held on November 26, 1934. The rules proposed were denied without prejudice to further submission, based on the finding of the Division Administrator that they were "beyond the powers and without the scope of the duties delegated to the Agency Committee." Agents were not members of the Industry and were not subject to the Code, and the relationships to be governed by the proposed regulations were chiefly those between agents and actors. No final decision had been reached up to May 27, 1935.

d. The Actor-Producer Committee

The Code provided that should the Administrator determine at any time after notice and upon a fair showing that a set of fair practices should be adopted governing relations between producers and writers,

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(*) Transcript of National Recovery Administration Hearings on the Motion Picture Industry Code, Volume 2, page 331. September 13, 1933.

directors, technicians, actors, and agents a special committee should be appointed for that purpose (*).

The National Recovery Administration decided that such a set of fair practices was necessary to govern relations between actors and producers and writers and producers (**).

These committees were set up similar in form to the Agency Committee. The Actor-Producer Committee consisted of five representatives each of producers and actors, and the Writer-Producer Committee, five representatives each of writers and producers.

On June 19, 1934, the Actor-Producer Committee first met. Considerable divergence in views was expressed. The actor members of the Committee compiled a set of suggested fair practices which were then submitted to vote. On each of the proposed rules, the producer members of the Committee voted "no" and the actor members of the Committee voted "yes".

In the month of February 1935 the actor members of the Committee submitted a report to the National Recovery Administration. This report was simultaneously published in the trade papers in contravention of a provision of the Code (***).

This report contains sharp complaints against the producers' treatment of little known actors with respect to hours and wages. Claims were made that sixteen hour days with practically no rest periods undermined the health of the actors. Use was made of Division Administrator Rosenblatt's report on salaries of July 7, 1934 showing that of 1,563 actors listed therein, 432 or 28 per cent earned less than $1,000 and $2,000; that 49 per cent listed therein earned less than $2,000 in 1933; that 1,120 or 71 per cent of the 1,563 received less than $5,000 in 1933. Moreover, it was claimed that 10 per cent agency commission fees and considerable wardrobe expense (sometimes amounting to $1,000) were necessary before an actor could fill the roles required.

Before the Code became inoperative the producers acceded to practically all the requests of the actors, including limitations on working time and overtime provisions, but refused to recognize the Screen Actors Guild. The Producers' concessions were made through the actors branch of the producer-controlled Academy.

The Writer-Producer Committee set up at the same time as the Actor-Producer Committee and similar in form and duties to the Actor-Producer Committee never submitted any report to the National Recovery Administration and succeeded in accomplishing little. Negotiations with regard to writers were carried on principally through the Academy of Motion Picture Arts and Sciences.

(*) Article V, Division B, Part 4 (A) (a) of the approved Code

(**) Administrative Order No. 124-18 dated June 6, 1934 signed by Hugh S. Johnson, Administrator for Industrial Recovery.

(***) Article V, Section B, Part 4 (A) (c) of the approved Code.

3. THE "EXTRA" PROBLEM

The Code defined "extra players" as "those who by experience and/or ability are known to be competent to play group and individual business parts and to otherwise appear in a motion picture in other than atmospheric background or crowd work." (*)

a. Employment

The number of persons directly or indirectly involved in the problem of extra employment in motion pictures in the Los Angeles area has been estimated at widely differing figures. Registrations by the Central Casting Corporation apparently reached a peak of about 17,500 in 1927 and 1928 when numerous individuals registered for talking, musical, dancing and other specialties due to the demand for sound pictures. Since that date, the registrations of all classes have fallen off. The total is now estimated to be between 8,000 and 10,000 inclusive of the active lists and what are termed "casuals". In 1932, an average of 677 placements per day cleared through the Central Casting Bureau.

The Academy of Motion Picture Arts and Sciences in a report submitted to the National Recovery Administration about the time of the formulation of the Code stated that there were approximately 12,000 persons registered in Hollywood as available for employment as extras. It was further stated that the requirements of all studios in the Los Angeles area averaged 631 placements per day during the six months period ending June 30, 1933. The Academy further stated that informed persons estimated the number of extras who had a justifiable claim on the Industry for employment at from 1,400 to 2,400.

Representatives of extras at the Code hearings on September 12, 13, 14, 1933 charged that nepotism and favoritism were long standing evils in Hollywood and that wages for extras at that time ranged from $1.25 to $15.00 per day.

b. The Code Provisions

The Code provided a minimum wage for extra players of from $7.50 to $15.00 per day depending on the importance of the performances involved and the personal wardrobe required. Any player who was required to play a part or bit with essential story dialogue was classified as a "bit player" rather than an "extra player" with a minimum wage of $25 per day (**)

Further provision was made that people might be hired for crowds or to provide "atmosphere" at a minimum of $5 per day (***)

(*) Article IV, Section 3, Part 2 (a) of the approved Code.

(**) Article IV, A, Section 3, Part 3 (a) of the approved Code.

(***) Article IV, A, Section 3, Part 3 (b) (c) of the approved Code.

Provision was made that transportation to and from location should be paid by employers, thus preventing this type of chiseling into an extra player's wages. Where interviews or fittings were of unusual length the player was to be compensated for his or her time accordingly (*).

To provide against nepotism and favoritism it was stipulated that no one should be employed as an extra player who was a dependent member of the immediate family of any regular employee of a motion picture company or who was not obliged to depend upon extra work as a means of livelihood (**) and that rotation of work should be established to such a degree as might be practicable (***). An eight hour maximum day with overtime as provided for in the California Statutes relating thereto was also included in the Code (****).

c. The Standing Committee on Extras

To supervise the provisions of the Code regarding extras, to receive and pass on complaints and grievances, and to recommend such additional rules and regulations as might become necessary, the Code provided that a Standing Committee on Extras be appointed by the Code Authority (*****). This Committee was appointed January 12, 1934.

In March 1934 the Code Authority determined by resolution the following procedure for the Standing Committee on Extras:

1. That all communications from the Committee on "Extras" shall be addressed directly to the Code Authority for review and thereafter to the Division Administrator for approval.

2. That the Committee on Extras include in the minutes of the meetings the roll call vote by names of members, who vote on motions which result in a division of votes.

3. That no interpretation by this committee shall be regarded as final, until such interpretations have been approved by the Code Authority and the Administrator for Industrial Recovery.

4. That the announcement of interpretations shall be withheld from publication until approved.

One of the first accomplishments of the Standing Committee on Extras was an interpretation of those provisions of the Code establishing minimum wages for extra players depending on dress requirements. This interpretation was adopted by the Committee on February 19, 1934 and was approved by the National Recovery Administration on March 6, 1934 (******).

(*) Article IV, A, Section 3, Part 3 (d) of the approved Code.
(**) Article IV, A, Section 3, Part 4 (b) of the approved Code.
(***) Article IV, A, Section 3, Part 4 (e) of the approved Code.
(****) Article IV, A, Section 3, Part 4 (c) of the approved Code.
(*****) Article IV, A, Section 3, Part 1 of the approved Code.
(******) Administrative Order No. 124-11 signed by Sol. A. Rosenblatt, Division Administrator.

The Committee attempted to solve the problem of the large number of extras registered for employment by requiring re-registration. The intention was to eliminate at the time of registration persons who did not depend upon this work for a means of livelihood or who for other reasons might be ineligible. On March 3, 1935, the trade press announced that 1,004 persons from a list of 20,000 possibilities had been registered by the committee handling registration, which consisted of three representatives of extra players, three producer representatives and Mrs. Mabel Kinney, who was chairman of the Standing Committee on Extras. At a later date in 1935 provision for the registration of approximately 500 more players was made.

Many extra players complained that discrimination had been shown in making up the re-registration lists and that those actually seeking employment had to be on the active list in order to secure work as extra players and so to receive any benefits from the Code provisions. Neither the Code Authority nor the Administrator approved the registration which was recalled for a more unrestricted procedure. No solution had been reached at the time the Code became inoperative.

A further duty of the Committee was to hear and pass on complaints made by extras. During the period of its operations the Committee heard 1,065 complaints of this nature and satisfactorily adjusted 981, or 92 per cent (*).

4. STUDIO LABOR

Prior to the Code the hours of both skilled and unskilled labor in the studio were irregular depending almost entirely upon the exigencies of production. The 1929 United States Census of Manufactures showed prevailing hours of labor per week between 45 and 48. Wages on the whole were somewhat higher than the amounts paid the same class of workers in the community outside the studios. A higher percentage of all labor was skilled.

At the hearings on the proposed Code of Fair Competition for the Motion Picture Industry, September 14, 1933, Sidney R. Kent, president of the Fox Film Corporation, stated that by agreement between producers and labor prevailing hours had been reduced from 48 to 40. He further stated that if prevailing hours were to be reduced to 36, as was proposed, maintenance of the weekly wage rate would amount to a wage rate increase of approximately 14⅓ per cent.

a. The Code Provisions

The Code provided that studio labor should work not more than 36 hour hours in any one week (**). These maximum hours did not apply to employees on emergency maintenance and repair work, nor to cases where restriction of hours of skilled workers on continuous processes would hinder, reduce or delay production, nor to employees engaged directly in production work whose working time necessarily followed that of a production

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(*) Report on Code Authority Affairs contained in July 24, 1935 issue of the Motion Picture Daily, page 1.

(**) Article IV, A, Section 1 (c) of the approved Code.

unit, nor to employees assigned on location work (*). Provision was made for compensatory periods of idleness in cases where these exemptions applied (**).

The Code provided a minimum wage for employees of all classes of 40 cents per hour. In addition to this, various specified types of studio labor were given minimum wage rates ranging from 60 cents to $2.25 per hour (***).

With respect to so-called "stand by" or "key men" not more than one man in each of such classes was to be assigned to one production unit. It was provided that a weekly wage ranging from $60 to $76.75 might be substituted for the hourly rate (****). It was also provided that certain employees might be compensated on a weekly rate rather than on an hourly rate when such employees were on distant location work. When such scales were substituted it was required that all employees' expenses be paid. (*****).

An over-riding provision stipulated that if the prevailing labor conditions as of August 23, 1933 as fixed in any agreement or as in force between an employer and associations of employees should be more favorable than those scales designated in the Code, such conditions should prevail with respect to those employees in such localities.

c. The Studio Labor Committee

To assist in the administration of those provisions regarding studio labor, the Code Authority appointed a Studio Labor Committee. This Committee has been commented on in Chapter III. The Committee sent copies of the minutes of its meetings to the National Recovery Administration. Inspection of these records reveals that most complaints were routine with respect to the major producing companies. These minutes, however, reveal some complaints against independent studios showing wholesale violations by fly-by-night operators. During its life the Committee heard 262 cases and adjusted 258 or 98 per cent (******). There were comparatively few enforcement difficulties with regard to this type of labor under the Code. No statistics as to conditions since the Code became inoperative are available.

5. CLERICAL WORKERS IN THE STUDIOS

Clerical workers in the studios and business offices of producers worked from 40 to 50 hours per week prior to the Code and were paid on the whole about the same as this type of employee in other business offices. A maximum 40 hour week for this type of employee was established by the Code (*******). Employees in professional capacities, department heads

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(*) Article IV, A, Section 1 (d) of the approved Code.
(**) Article IV, A, Section 1 (e) of the approved Code.
(***) Article IV, A, Section 2 (a) (c) (d) of the approved Code.
(****) Article IV, A, Section 3 (e) of the approved Code.
(*****) Article IV, A, Section 2 (f) of the approved Code.
(******) Report on Code Authority Affairs quoted in Motion Picture Daily issue of July 24, 1935, page 1. Also reports of Committee - National Recovery Administration files - Motion Picture Industry.
(*******) Article IV, A, Section 1 - (b) of the approved Code.

and their assistants, directors, managers, executives, their assistants and secretaries, producers, their assistants, purchasing agents and writers were exempted from these hour limitations (*).

No data is available as to changes caused by the Code. No compliance difficulties were experienced and no data is available as to any changes since the invalidation of the Code.

C. DISTRIBUTION

1. EMPLOYMENT

No recent statistics on the number of persons employed by the distribution branch of the Industry are available. The Motion Picture Almanac for 1935 estimates this figure at 8,000. The United States Census of Distribution for 1929 reported a figure of 9,342.

Employees in distribution include executives, salesmen, office employees, checkers, and others in the home offices and the various branch offices of the distributors' in the 31 key exchange cities.

According to the 1929 Census of Distribution, wages and salaries in 1928 constituted 52 per cent of the total cost of distribution. This total cost was given as $34,639,281; wages and salaries, $17,978,258. Of this latter amount, 335 executives received $2,467,258 (14 per cent); 1,562 salesmen received $6,253,076 (35 per cent); office workers, checkers and other employees were paid the balance of $9,257,378 (51 per cent).

2. CODE PROVISIONS

In distribution, labor was a minor problem. Well paid for the most part before the Code, employees were but little affected by the Code provisions.

Wage minima of $14 to $15 per week depending on population differentials similar to the provisions contained in the President's Reemployment Agreement, were established by the Code. These wage minima prevailed regardless whether the number of hours worked was less than the number specified in the Code.

The maximum permissible working week was set at 40 hours. Employees on emergency, or maintenance and repair work, and executives and outside salesmen were as usual not included in these limitations. The usual child labor provision limiting employment to those sixteen years of age or over applied throughout the Industry.

It may be fairly stated that there were no labor disputes in this division during the Code period.

(*) Article IV, A, Section 2 (b) of the approved Code.

CHAPTER VI

THE INTERSTATE CHARACTER OF THE INDUSTRY, AND SUGGESTIONS AND RECOMMENDATIONS FOR THE FUTURE.

A. THE INTERSTATE CHARACTER OF THE MOTION PICTURE INDUSTRY

Throughout this report, it has been shown that, acting individually, the various branches of the industry have been unable to eliminate many sources of friction, and are prevented from acting in concert by the Sherman and Clayton anti-trust acts. The question immediately proposed is whether some beneficial steps might be taken under the Federal government, if the practices in question are interstate in character.

1. PRODUCTION AND DISTRIBUTION

The production and distribution phases of the Industry must be considered together rather than separately. According to the 1929 United States Census of Distribution, 444 of a total of 533 motion picture distribution exchanges in the United States were then owned or controlled by producers. These producer-controlled exchanges accounted for 95 per cent of the total volume of business done that year, and of the remaining five per cent, three per cent was done by export exchanges, and only two per cent by independent domestic exchanges. It is thus obvious that individual consideration of distribution would be purely academic.

Of 92 producing establishments listed by the 1933 United States Census of Manufacturers, 63 or 68.4 per cent were located in the state of New York and the state of California. This concentration of production is made still more apparent when it is realized that eight major companies in 1934 released 75.2 per cent of the number of all features produced in the United States. (*) Considered by value or by cost of production this figure would be even higher.

From the producing establishments, film goes to distributing exchanges, the majority of which are located in 31 key cities, each servicing the surrounding "exchange territories". According to a survey by the Motion Picture Herald,(**) 25 of these exchange territories include parts of two or more states.

For these, among other reasons, it must be concluded that the production and distribution divisions of the Motion Picture Industry are interstate in character. In a number of cases, the Courts have so held. (***)

(*) The Film Daily Year Book for 1935

(**) Motion Picture Herald, issue of January 28, 1933

(***) Famous Players - Lasky Corporation v. United States, 232 U. S. 30,
United States v. First National Pictures, Inc., 232 U. S. 44,
Binderup v. Pathe Exchange, 263 U. S. 291.

2. EXHIBITION

Exhibition presents a different problem. The physical function of exhibition of film, taking place in a limited area, probably directly affects interstate commerce only in rare instances. However, there are other and weightier considerations.

The exhibitor seldom purchases the film he exhibits. He is merely granted the right, through a license and rental contract, to exhibit films as they pass through the state or city in which his theatre is located. Films are not delivered to an exhibitor with intent to end their transit there, nor is the transaction complete with such delivery. Films must be returned to the distributor who then forwards these films to other exhibitors, or the films must be directly forwarded to other exhibitors at the request of the distributor. The movements of the films in commerce are interrupted only long enough to fulfill existing contracts; the films then move on to other exhibitors in more remote areas and out of the locality of the former theatre. The film or films are thus within a current of commerce among the states and are part and incident of such commerce.

This current of commerce between distributors and exhibitors takes place principally between distributors located in 31 key exchange cities and exhibitors located in cities and towns throughout the entire country. Twenty-five of these key exchange cities service parts of two or more states. In general, clearance spreads out from these central points to the other theatres in the territory serviced. The number of prints of any film are limited. Outlying theatres must wait their turn for the use of these prints. A delay in exhibition at a "key" house may be reflected in delays to theatres in other states.

The instrument by which overbuying, clearance, zoning, block booking, and other practices are effected is the license and rental agreement. If such an agreement be entered into between parties in different states, it would seem that the instrument itself might be considered interstate in nature, and likewise the subject of such agreement. In this connection it is to be noted that many exhibition contracts are entered into in the producer's name (as the holder of the title and copyright to film) even though the distributor and exhibitor concerned may be in the same state. In other cases, a similar result is achieved where both the distributing and producing corporations are controlled by a third corporation which acts as a holding company for both.

The chain operation of theatres should be considered. In addition to the producer-distributor controlled theatres stretching from coast to coast, there are a number of independently owned circuits. Many of these operate theatres in several states. The two groups considered together own or control 28 per cent of all theatres in the United States, and 48 per cent of the total seating capacity. (*)

(*) Calculated from figures appearing in the Motion Picture Almanac for 1935, Quigley Publishing Co., N. Y. Pg. 988

The importance of these theatres in the Industry cannot be guaged solely from these figures. As indicated by the high proportion of seating capacity to number of theatres, the chain groups control a relatively large number of the bigger theatres, the so-called "key houses". It is such theatres that are able to negotiate long periods of clearance, and it is from the playing dates of such theatres that the clearance of other theatres is figured and negotiated. Their paramount importance is obvious.

3. THE INDUSTRY AS AN ENTITY

Although many arguments may be presented tending to show that each branch of the Industry in itself has interstate features, there is an alternative view of the problem. The Industry, as a whole, may be considered as a commercial unit in which the various branches are so interdependent as to defy legal separation, and in which no one branch can be adequately or justly considered without consideration of all others.

Many facts supporting this view are evident. The nation-wide advertising campaigns featuring players and pictures which are supported by all branches of the Industry will serve as an example. The extent of this advertising may be judged from figures presented in the Motion Picture Almanac for 1935. It is there estimated that the cost of production for the 1934-5 season was $110,000,000, and that the annual motion picture advertising expense in the United States was $70,000,000. In other words, it costs nearly two-thirds as much to advertise the films as it costs to make them.

The vertical integration of the industry, whereby a few companies control a major part of production and distribution and a large part of exhibition, has already been commented on. It is obvious that the exhibition branch of the Industry is dependent on these companies.

On the other hand, no one branch of the Industry could exist independently. Each is dependent, one upon the other, for existence.

The inseparability of activities between the three branches of the Industry would seem to justify a conclusion that the Courts would apply the commerce clause of the Constitution to this Industry as a unit and not to each branch of the Industry separately.

In Swift and Company et al. v. United States, 196 U. S. 375 (1905) the United States Supreme Court, speaking through Mr. Justice Holmes, said in part --

> "* * * commerce among the states is not a technical legal conception but a practical one drawn from the course of business."

And in Stafford et al. v. Wallace et al., 258 U. S. 495 (1922), the constitutionality of the Packers and Stockyards Act of 1921, 42 Stat., 159, was involved. This Act provided for supervision and control of facilities furnished, and regulated the business of the packers done in

interstate Commerce. The right of the Federal Government to regulate depended upon whether the business conducted was in or affected interstate commerce.
The Court Said:

> "The application of the Commerce Clause of the Constitution in the Swift Case was the result of a natural development of interstate commerce under modern conditions. It was the inevitable recognition of the great central fact that such streams of commerce from one part of the country to another which are everflowing, are in their very essence the commerce among the states and with foreign nations which historically it was one of the chief purposes of the Constitution to bring under national protection and control. This court declines to defeat this proposition in respect of such a stream and take it out of complete national regulation by a nice and technical inquiry into the non-interstate character of some of its necessary incidents and facilities when considered alone and without reference to their association with the movement of which they were an essential but a subordinate part."

In these, and many other cases, the Court dealt with the Industry as an entity.

It may be contended that because the transactions between producer and exhibitor, and distributor and exhibitor is a contractual relationship relating to transactions (showing films) which in and of themselves are intrastate commerce, they are not subject to federal jurisdiction. That argument was raised in the case of Standard Oil Co. v. U. S., 283, U. S. 183. It was there contended that cross-licensing agreements for the manufacture of gasoline by the cracking process were agreements relating to manufacture, and not to sale or transportation, and, therefore, were not within the purview of the Anti-Trust Acts. But Mr. Justice Brandeis, delivering the opinion of the court, said (p. 168):

> "The defendants contend that the agreements assailed relate solely to the issuance of licenses under their respective patents; that the granting of such licenses, like the writing of insurance, New York Life Ins. Co. v. Dear Lodge County, 231 U. S. 495, is not interstate commerce; and that the Sherman Act is therefore inapplicable. This contention is unsound. Any agreement between competitors may be illegal if part of a larger plan to control interstate markets. Montague & Co. v. Lowry, 193 U. S. 38; Shawnee Compress Co. v. Anderson 209, U. S. 423. * * * Moreover, while manufacture is not interstate commerce, agreements concerning it which tend to limit the supply or to fix the price of goods entering into interstate commerce, or which have been executed for that purpose, are within the prohibitions of the Act. Swift & Co. v. United States, 196 U. S. 375,397; Coronado Coal Co. v. United Mine Workers, 268 U. S., 295, 310; United States v. Trenton Potteries Co., 273 U. S. 392."

Even here the parties to a transaction are engaged wholly in intrastate commerce, and their activities affect the interstate business of some third person not a party to that transaction, it has been held that such transaction is within the purview of federal regulation. In the case of International Brotherhood of Electrical Workers v. Western Union Telegraph Co., 46 Fed. (2d) 736, the Electrical Workers were enjoined from conspiring to violate the Anti-Trust Act where both the employers and the employees were engaged in intrastate commerce, and their activities affected the business of the Western Union Telegraph Company, which was not a party to the employment contract.

The same situation obtained in the cases involving the restraints in the local live poultry markets of New York. Criminal prosecutions and suits in equity were sustained against the Greater New York Live Poultry Chamber of Commerce and many individuals engaged in a conspiracy to violate the Sherman Act. (*)

In the latter case it was argued that an injunction issued by the District Court for the Southern District of New York was invalid, because it was broad enough to enjoin acts of a purely local character and was not limited to those acts which affected or dealt with interstate commerce. In giving the opinion of the court, Mr. Justice Butler said:

> "And maintaining that interstate commerce ended with the sale by receivers to marketmen, appellants insist that the injunction should only prevent acts that restrain commerce up to that point. Intrastate acts will be enjoined whenever necessary or appropriate for the protection of interstate commerce against any restraint denounced by Act."

Here such intrastate transactions were considered part of the plan which affected interstate commerce.

In Victor v. Ickes, Supreme Court, District of Columbia, Equity No. 56298, December 1, 1933, the Court stated:

> "The Petroleum Industry is the third largest in this country; the bulk of gasoline does flow in interstate commerce. The functions of a filling station is as essential to that flow as is the function of commission men and dealers in the Packing Industry at the Stockyards." (The Court had previously cited the Swift and Stafford cases.)

In the Motion Picture Industry the film, which is the product of this Industry, moves continuously in interstate commerce. The exhibition houses, like the filling stations, perform their task in relationship to interstate commerce within the jurisdiction of one

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(*) Greater N. Y. Chamber of Commerce v. U. S., 47 (2d), 196, cert. denied 283 U. S. 837. Local #167, et al v. U. S., 78 Law Ed. 506.

state or community. The exhibitors' function are as essential to the flow of commerce in the Motion Picture Industry as are the functions of filling stations in their relationship to the movement of gasoline in interstate commerce.

From these facts, the conclusion may be fairly made that, through its connection with and relationship to the distribution and production branches, the exhibition branch is an integral and necessary part of the entire scheme and plan of the Motion Picture Industry. Further, reviewed in the light of the Standard Oil case, the Stafford case, the Swift case and others, it would seem that the Motion Picture Industry is of such a character that the Federal Government would be justified in assuming jurisdiction over the Industry as a unit.

B. SUGGESTED POINTS OF APPLICATION FOR FEDERAL POWER

At this point it would seem advantageous to inquire as to those places where Federal assistance might prove beneficial to the Industry and the general public.

1. BLOCK BOOKING

Several lines of thought have been indicated in the discussion of this subject earlier in this report.

Exhibitors in general favor complete abolition of block booking. Distributors, on the other hand, oppose any such steps.

Outside of complete elimination of the practice, the most frequently advanced suggestion for lessening the conflict resulting from the practice is the granting of a cancellation privilege to exhibitors wherever they have bought films in blocks. That producers and distributors are not unalterably opposed to such a solution may be seen from the fact that the Optional Standard License Agreement of 1933, which was negotiated between groups of distributors and exhibitors, contained a cancellation clause, although a much restricted one.

But the problem is not easy of solution. The Federal Trade Commission started its inquiry into the practice of block booking in 1921. In 1927, the Commission declared block booking to be unlawfully in restraint of trade and ordered various defendants to cease and desist from using this method of selling pictures. (*) In 1932 it was announced by the Federal Trade Commission that the problem would not be considered further when the United States Circuit Court of Appeals ruled against the Commission's contention that block booking was in violation of the Federal Trade Commission Act. (**)

(*) Federal Trade Commission v. Famous Players-Lasky Corporation et al., Federal Trade Commission Docket No. 835.

(**) Federal Trade Commission v. Paramount Famous-Lasky Corporation, Adolph Zukor, and Jesse L. Lasky, April 4, 1934, United States Circuit Court of Appeals for the Second District.

During its long inquiry, the Commission collected 15,000 pages of testimony and 17,000 pages of exhibits. In the face of such a record, any attempts to delve briefly into the full implications of the use of block booking must be fruitless.

As the problem stands at present, the use of the practice, without limitation, is legal. Any attempts at limitation of the use of the practice should be preceded by an intensive study of the subject by a disinterested Federal agency. Since the practice is one used by distributors, block booking is obviously within Federal jurisdiction.

2. OVERBUYING

Overbuying of film with intent to deprive a competitor of sufficient product with which to operate his theatre on a reasonable basis is considered an indefensible practice throughout the Industry.

However, the victim of such a practice experiences difficulty when he applies to the Courts for remedy. He must prove his case against a financially more powerful opponent under statutes not specifically designed for protection against this practice. Lengthy and expensive litigation may exhaust a complainant's resources, already drained by the harmful effects of the practice. The Courts before which he pleads are usually not informed as to the common Industry practices except by the litigants. Many legal loopholes may be open to a powerful and probably better advised opponent.

It would seem simple to pass a statute forbidding an exhibitor to overbuy or forbidding a distributor to license film to an exhibitor in such quantity over his normal requirements as to prevent a competing exhibitor from obtaining sufficient product. The difficulty arises in connection with the application and administration of such a statute.

Leaving the Courts to decide whether violations have occurred in specific cases would again raise the spectre of evasion. Even under the Motion Picture Code, where all members of the Boards which determined overbuying complaints were fully informed on general Industry practices, it was not always possible to secure uniform agreement. How much more difficult a task it would be for a Court unacquainted with the weight which might be given different factors, having no Industry experience to fall back on in determining which of two arguments might be considered specious. Moreover, the objection to lengthy and costly litigation still obtains.

It might be possible to frame a statute making illegal any contract licensing the exhibition of film through which one exhibitor by overbuying prevented another exhibitor from securing adequate product, thus acting as an unreasonable restraint on trade. Rapid and inexpensive determinations as to violations might be made by small bodies under Federal supervision located in each exchange territory, easy of access to all exhibitors, as under the Code. The Federal Government would then be in a position to withstand appeals to the

Courts in place of leaving the small and relatively helpless exhibitor to his own resources. Such a method would answer most of the objections previously referred to and would extend Government protection to the small business man.

3. MONOPOLISTIC PRACTICES

Claim and counter-claim with regard to the charges that the major motion picture compaines are really monopolistic have been advanced for years. An atmosphere of suspicion and distrust has existed between the affiliated and unaffiliated groups. Such monopolistic tendencies as are inherent in operation under the copyright laws do exist in the Motion Picture Industry.

The growth of trade practices such as block booking, forcing of short subjects, and designation of play dates, have tended to create a protected market for the large companies. Competition from independent producers is restricted since absorption of a large portion of an exhibitors' total playing time and preferred playing time, limits the licensing of independent product.

The affiliated companies are often in direct competion with the exhibitor who must license their product in order to secure a sufficient supply of suitable films. While it is not incumbent on these large units individually to conduct their business so that competitors may have an equal degree of opportunity, the existence of reciprocal agreements between these greater corporations frequently intensifies the hardships of independent interests.

In the absence of proven combination, the methods of negotiation as practiced by the individual companies may hinder independent interests, but these methods have not been considered illegal because no one company even approaches monopoly of any division of the Industry. However, the collective effect of these practices tends to establish restraints on free competition.

Frequently, more serious charges are made. It has been alleged that major companies have enaged in collusive effort to restrain competition and establish a virtual monopoly. Such statements are usually advanced by independent exhibitors but also occasionally by persons interested in social welfare. (*)

(*) Letter of Dr. A. Lawrence Lowell of Harvard University to Division Administrator Sol. A. Rosenblatt, December 13, 1933, quoted in full in record of Investigation of National Recovery Administration by Senate Committee on Finance pursuant to S. Res. 79, 74th Congress, 1st Session, April, 1934:

> "The five large producing companies have, by their business methods, obtained a controlling grip on the business and are able to put forth upon the community any films that they please."

Such airs of suspicion and doubt should be cleared. Whether these charges are true or false should be generally established. The public is entitled to full knowledge.

A thorough study of the Industry by a Federal agency with adequate facilities and authority to examine books and other records should be made. Such a study would undoubtedly consume a considerable period of time, but the results possible to such an inquiry would justify the cost and time.

4. CLEARANCE AND ZONING

The problems of clearance and zoning have been discussed previously in this report. These problems are not new, nor were they new under the Code. A number of years ago the Motion Picture Producers and Distributors of America, Inc., through the Film Boards of Trade attempted to eliminate friction in the Industry by the adoption of uniform clearance and zoning schedules through negotiations between distributors and exhibitors. These attempts were enjoined by the Federal Courts, which rules that such schedules were in contravention of anti-trust laws. (*) No further attempts were made until provisions for the formulation of equitable schedules of clearance and zoning were incorporated in the Motion Picture Code.

The choice seems clear between laissez-faire and uniform schedules. No insuperable difficulties appear are present to prevent the establishment of schedules fair to all exhibitors.

Here no question need be raised as to the interstate character of the practice to be regulated. Formulation of uniform schedules was estopped by Federal anti-trust laws. Relaxation of these statutes would permit the Industry to act. It follows, of course, that adequate Federal supervision would have to be provided to prevent any undue influence from major groups and to safeguard the rights of minority groups and the public.

Any steps in establishing uniform schedules of clearance and zoning would necessarily be slow as indicated by experience under the Code. Only one major schedule was approved under the Code, and this after many long months of labor. More would have followed had not the invalidation of the Code intervened. However, in the short time that this one schedule was in operation it proved satisfactory. In future attempts, sufficient time would have to be allotted to preclude hurried formulation and to provide for adequate consideration of the rights and needs of all theatres involved.

Uniform schedules could hardly harm the small exhibitor. The large exhibitor, the affiliated or independent circuit, is at all times under the present system able to contract for all the protection desired over smaller theatres to the limit such exhibitor wishes to pay for

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(*) Wm. Youngclaus v. Omaha Film Board of Trade, United States District Court for Nebraska, July 2, 1932.

such protection. This protection may be unfair to competing exhibitors. The distributor exercises the only restraint and that only when he may be unwilling entirely to eliminate competition. He has observed that high rentals are usually the result of keen competition.

There is, however, another factor. Distributors are frequently in keen competition for the business of these larger exhibitors and so are willing to give concessions in the way of protection in their efforts to handle these large accounts. Distributors are prevented from acting in concert by the anti-trust laws. Reciprocal treatment between affiliated theatre groups may overlook a nice consideration of the needs of financially weaker exhibitors.

C. SUGGESTED MEANS FOR APPLICATION OF FEDERAL POWER

Little good is accomplished in pointing out places where use of Federal powers might be beneficial unless constructive suggestions are made as the methods by which this power should be exercised.

The idea of a simple statute directed toward bettering any set of conditions must immediately give way to the problem of its application and administration. The first thought is to refer the matter to the Courts.

The difficulties of using the Courts to curb the vicious aspects of overbuying have been commented on in this chapter. The difficulties a Court might be called on to contend with in an attempt to cope with the problem of block booking have been previously suggested in Chapter IV - C. No court could be called on to investigate and inquire into the industry in general in other than some specific instance and it would be hardly reasonable to ask the Federal Courts to add to their already crowded dockets a review of any or all proposed uniform clearance and zoning schedules.

Only a Federal Commission would seem versatile enough to cope with these various situations. Such a commission might be a separate Federal body or might constitute an addition to the duties of the existing Federal Trade Commission.

For these several reasons a separate commission would seem to be indicated.

1. Due to the unique character of this Industry and its trade practices, the functions of such a body would also be unusual. There would seem to be no adequate reason for merging a body established to perform these functions with another body.

2. In a single body responsible to the public for its acts, the element of shifting of responsibility would be minimized.

3. Centralization of control of such a body would tend toward more efficient administration and management.

The physical form of such a body would be dependent on the duties to be performed. However, a suggestion may be advanced. Control of

the commission could be vested in a number of Federal Motion Picture Commissioners appointed by the President with or without the approval of the United States Senate. These Commissioners might be appointed for a stated period of years, with the proviso that acceptance be illegal of any position in connection with the Motion Picture Industry within a certain period after termination of service as a Commissioner.

A Deputy Commissioner might be appointed for each exchange territory to work in such territory in cooperation with members of the Industry. Liaison committees composed of local members of the Industry and patterned after the Code Clearance and Zoning Boards might work with and assist the Deputy Commissioner in efforts to prepare equitable uniform schedules of clearance and zoning for each competitive district. The Government would retain the power of disapproval of any such schedule or any part of such schedule. A right of appeal from any schedule to the Commissioners could be provided at any time a change in competitive conditions occurred.

The Liaison committee might assist the deputy commissioners in determining the facts with regard to any complaints regarding unfair overbuying.

Personnel might be assigned to the Commission to study block booking and other controversial problems of the Industry with a view to eventual elimination of causes of controversies. The commission might be intrusted with the duty of seeing that satisfactory standards be maintained with regard to all films entering into interstate commerce.

A factual and theoretical study of the industry which would provide information invaluable to both the Industry and the Government might be undertaken under the auspices of the Commission. This would be a contribution of the highest value to an Industry so heavily charged with responsibilities to the social and cultural welfare of the Nation.

MOTION PICTURE INDUSTRY STUDY

APPENDIX

The material which follows is Evidence Study No. 25, with the addition of pages 10A, 30A and 30B.

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MOTION PICTURE INDUSTRY

Foreword

The data presented in this report have been assembled from both government and private sources. Most of the government data used have been taken from publications of the Bureau of the Census, but data have also been taken from reports of the Bureau of Labor Statistics and the Bureau of Internal Revenue. Among the private sources, the most important are the Motion Picture Almanac, the Film Daily Yearbook, reports of the Standard Statistics Company, and the trade association, the Motion Picture Producers and Distributors of America, Inc.

The organization of this study is somewhat different from that called for in the Outline for Evidence Studies. The Industry as codified included the production, distribution, and exhibition of moving pictures, and it has been considered advisable to follow the Outline through separately for each of these divisions. The present study therefore consists of four parts: Part I, Introduction, in which certain material pertaining to the Industry as a whole is presented; and Part II, Production; Part III, Distribution; and finally, Part III, Exhibition. The particular Census publications used in describing each of the three main divisions of the Industry are as follows: Production, Census of Manufactures; Distribution, Census of Wholesale Distribution; and Exhibition, Census of American Business, "Services, Amusements, and Hotels".

The Census data are considered roughly applicable to the appropriate division of the Industry as codified. The fact that the Census coverage does not include the smaller establishments is not held significant in this Industry. As pointed out in the text, however, Census data and those from private sources often indicate large discrepancies which are presumably due to the fact that the latter are frequently estimates and to difference in the coverage of the two sets of data.

PART I: INTRODUCTION

Chapter I. The Nature of the Industry

Definitions of the Industry

The Motion Picture Industry, as defined by the Code of Fair Competition for the Industry, includes,

> "... without limitation, the production, distribution, or exhibition of motion pictures and all activities normally related thereto, except as specifically excepted from the operation of the Code."

The limitations in the scope of the Code are as follow:

> "Nothing in this Code shall be deemed to apply to the production, distribution, or exhibition of motion pictures on film of recognized substandard widths, or to slide films, or to non-theatrical motion pictures designed primarily for educational, scientific, industrial, commercial, advertising, selling, or other non-theatrical purposes, or to television of motion pictures, provided that the commercial production, distribution, or exhibition of such films shall be subject to investigation by the Code Authority to determine whether such production, distribution, or exhibition of such films is unfair competition to an established motion picture theatre or theatres. If found to be unfair competition, the Code Authority shall promulgate rules and regulations governing such unfair competition."

The Code covered "actor employees in vaudeville and presentation motion picture theatres" in "both permanent and traveling companies of artists playing presentation and vaudeville houses," but it did not cover "amateur" shows, "rep," "tab," "tent," "wagon," "truck" and "medicine" shows, "show-boat" or "burlesque," as these terms are understood in the theatre.

The Industry as defined by the Census of Manufactures embraces,

> "... all processes and activities connected with the production of motion pictures, such as the photography of scenes, the development of exposed films, the printing of projection films, and other studio and laboratory work necessary in connection with the preparation of projection films for use."

Since Census of Manufactures data thus cover only motion picture production, they are not applicable to the entire Industry as defined by the Code, but only to the production branch of the Industry which is described in Part II of this study. The remaining branches of the Industry, distribution, and exhibition, are covered by the Wholesale Census and the Census of Service, Amusements, and Hotels.

Description and Scope of the Industry

The Industry as codified is composed of three major divisions of activity; production, distribution, and exhibition. These three economic divisions of this Industry are closely inter-related with and dependent upon each other. The production division covers all of the processes and activities involved in

the making of motion pictures. It includes the preparation and photography of scenes; the developing of exposed films; the printing of projection films; and other studio and laboratory work required in the preparation of positive films for use. The distribution division involves the "renting" or "leasing" of films to exhibitors; the maintenance and physical distribution of the films, and the collection of due accounts. It also includes the outright sale of finished films and the sale of advertising materials. The exhibition division includes the commercial exhibiting of the finished films in the theatres; and also vaudeville and presentations given in conjunction with motion pictures.

This Industry, which has assumed a position of unusual importance because of its far-reaching influence upon social and economic standards and conduct, is characterized by rapid growth by the possibility of radical changes through technical developments in the film and related industries by the geographical concentration of production. It's further characterized by the large degree of integration of its three main divisions, and the individuality in the industrial practices which it follows.

Production, distribution, and exhibition are both horizontally and vertically integrated and the concentration of corporate ownership in the hands of a few large companies provides an economic division of the Industry between what are known as "major" and "independent" interests. The economic consequences of this concentration are reflected in nearly all problems of the Industry.

Assets

Tables I and IA show the assets of motion picture producers and exhibitors for the years 1930 through 1933. Fixed assets constitute the largest type in both the production and exhibition divisions. Total assets of producers dropped from $934,000,000 in 1930 to $249,000,000 in 1933, while in the exhibition division total assets rose during the same period from $619,000,000 to $1,076,000,000. The number of concerns reporting in the production division averaged around 175 each year, whereas in the exhibition group the number rose steadily from 1,889 in 1931 to 2,368 in 1933.

TABLE I

Assets of Motion Picture Producers, 1930-1933
(Dollars In Thousands)

	1930	1931	1932	1933
Number Reporting	182	170	177	181
Total Assets	$933,847	$849,916	$411,622	$248,824
Current	228,871	192,911	54,015	42,057
Investments	251,320	220,408	109,593	18,543
Fixed	384,421	371,766	218,629	163,640
Miscellaneous	69,235	64,831	29,385	24,584

Source: Bureau of Internal Revenue, tabulation sheets and published reports (Statistics of Income).

TABLE I A

Assets of Motion Picture Theatres, 1930-1933
(Dollars In thousands)

	1930	1931	1932	1933
Number Reporting	1,889	1,809	2,132	2,368
Total Assets	$618,792	$717,307	$986,684	$1,076,486
Current	102,404	119,728	205,919	265,927
Investments	53,340	68,143	173,753	244,684
Fixed	389,494	470,433	533,241	490,536
Miscellaneous	73,554	59,003	83,771	75,339

Source: Bureau of Internal Revenue, tabulation sheets and published reports (Statistics of Income).

Capital Investment

According to the Motion Picture Almanac the capital investment of the Industry stood at $2,000,000,000 in each of the years from 1929 to 1935, with the exception of 1934 when the figure was placed at $1,750,000,000. The investment in studios is roughly $100,000,000; the investment in the distribution branch of the Industry is something between $10,000,000 and $20,000,000; while that for the exhibition branch of the Industry lies between $1,630,000,000 and $1,880,000,000. In other words, the investments in production or distribution are insignificant in comparison with the investment in exhibition. In a study made recently by a group of architects, Messrs. Lamb, Rapp, Alschlager, Eberson and Schultz, it was estimated that $1,460,000,000 has been spent to date in the building of theatres exclusive of those parts of theatre buildings given over to office space. 1/

Interstate Character of the Industry

In the making of films, numerous writers, actors, actresses, directors, cameramen, and other artists and artisans, are assembled from many different states and foreign countries. Great quantities of unexposed films and large quantities of scenery, costumes, paraphernalia, and properties are transported from many different states to the studios located in those few where motion pictures are produced.

The distributors enter into contracts for leases with exhibitors for the exhibition of films throughout the United States through the media of correspondence, branch offices, and salesmen. Thus film contracts which are entered into between residents of different states, involve the leasing of a commodity manufactured in one state and transported to and used in another state.

1/ Verbal statement by Mr. David Palfreyman of the Theatre Service Division of the Motion Picture Producers and Distributors of America (June, 1935).

After the films are produced, they are packed into metal containers, and are transported by parcel post, express trucks and other common carriers, from the studios and laboratories to exchanges, then to the theatres in cities and towns of the country. After display to the public, the films are returned to the exchanges for redistribution to other theatres, or are forwarded to other exhibitors. Thus, there is a constant current of trade and commerce in films through the states.

PART II: PRODUCTION

Chapter I. The Nature of the Division

Total Number of Establishments

Table II indicates the number of establishments engaged in the production of motion pictures. It will be noted that in the first Census taken after the depression years of 1921 and 1933, the number of establishments showed a marked decrease in each instance.

TABLE II

Total Number of Establishments, for Census Years, 1921-1933

Year	Number	Per Cent Change from Preceding Year
1921	127	---
1923	97	-23.6
1925	132	+36.1
1927	142	+ 7.6
1929	142	no change
1931	140	- 1.4
1933	92	-34.3

Source: Census of Manufactures, 1929 and 1933, "Motion Pictures, not Including Projection in Theatres."

Number of Establishments by Principal States

An examination of Table III shows that more than 80 per cent of all motion picture establishments are located in six states. In 1929 California, the leading state, accounted for 41 per cent of all establishments and New York accounted for 21 per cent. By 1931 California had gained relatively and New York had lost, while in 1933 the reverse was true. The concentration in the six states was more marked in 1931 and also in 1933 than in 1929.

TABLE III

Number of Establishments, by Six Principal States

State	1929		1931		1933	
	Number	Per Cent of Total	Number	Per Cent of Total	Number	Per Cent of Total
U. S. Total	142	100.0	140	100.0	93	100.0
California	58	40.9	71	50.7	39	42.4
Illinois	8	5.6	7	5.0	8	8.7
New Jersey	6	4.2	5	3.6	3	3.3
New York	30	21.1	26	18.5	24	26.0
Ohio	8	5.6	6	4.3	3	3.3
Pennsylvania	5	3.6	6	4.3	1	1.1
Total, 6 States	115	81.0	121	86.4	78	84.8
Total, Other States	27	19.0	19	13.6	14	15.2

Source: Census of Manufactures, 1929, 1931, and 1933, "Motion Pictures, not Including Projection in Theatres."

Number of Members and Size of Concerns

The members of the production division of the industry fall into two groups. There are eight large companies which produce approximately 80 per cent of the total value of production as valued on a cost-of-production basis and approximately 65 per cent by number of features produced. 1/ Five of the major companies supply nearly 100 per cent of the newsreels produced.

The remaining pictures are produced by approximately 30 independent companies having sufficient importance to have the names of their production staffs listed in the Motion Picture Almanac. Most of these minor producing firms contribute their portion of the product under a "unit" system which fits into and becomes a part of the production schedules of the major producers. In addition to the above, there are many other small producers who make one or two motion pictures intermittently over a period of years.

Gross and Net Income

Table IV shows the gross income and the net profit or loss of motion picture producers from 1927 through 1932. In 1930 gross income increased almost 70 million dollars over the 1929 level of $343,445,000 and the producers reported a profit of more than $40,000,000 annually in each of these years. Although in 1931 gross income was almost 100 million dollars greater than in 1929, there was a net loss of $8,674,000. In 1932 gross income fell to less than one-half the 1931 level and the producers suffered a net loss of over $30,000,000.

1/ Motion Picture Producers and Distributors of America.

The decrease in the profitability of the Industry has been attributed to a number of factors, including over-expansion in the direction of seating capacity, erection of theatres at an excessive cost per seat, mismanagement within the Industry, payment of inordinately large compensation for services, and the effect of the depression upon the demand for entertainment.

TABLE IV

Gross Income and Net Profit or Loss, 1927-1932
(In thousands)

Year	Gross Income	Net Profit or Loss
1927	$239,426	$8,032
1928	230,266	17,109
1929	343,445	44,400
1930	410,700	40,282
1931	441,948	-8,674
1932	190,795	-30,199

Source: Bureau of Internal Revenue, Statistics of Income.

Net Income by Major Companies

Table V shows the consolidated net income of six major companies for 1932, 1933, and 1934. Attention is directed to the recovery made by the three companies, namely, Fox, Warner, and Paramount, which had the largest net bases in 1932. The totals show that the group loss of $36,519,000 in 1932 had by 1934 been turned into a net income of $14,371,000.

TABLE V

Consolidated Net Income or Loss for Six Major Motion Picture Companies, 1932-1934
(In thousands)

Company	1932	1933	1934
Group Total	-$36,519	$4,568	$14,371
Columbia Pictures Corporation	574	740	1,009
Fox Film Corporation	- 16,151	1,411	3,000 a/
Loew's Incorporated	7,961	4,034	7,480
Warner Brothers Pictures, Inc.	- 14,095	-6,292	-2,530
Universal Pictures	- 1,250	-1,017	- 500 a/
Paramount-Public Corporation	- 13,558	5,692 a/	5,912 a/

Source: Standard Statistics Company, Standard Trade and Securities, "Theatres and Motion Pictures," Vol. 75, No. 22 (February 20, 1935).

a/ Estimated.

Total Cost of Production

The production of motion picture films is not a manufacturing activity in the sense in which the term is generally used to designate the factory production of commodities. Furthermore, since the Motion Picture Industry does not usually sell, but leases or rents its product, it is impossible to determine the actual value of the output of a given year until a long time after its close. It is therefore necessary to substitute "cost of production" for "value of product" in presenting data for this Industry.

An examination of Table VI indicates that the cost of production increased each year from 1921, until it reached a peak of $184,102,000 in 1929 when the introduction of equipment for sound production caused a large increase in cost of production. In 1931, the Industry's decreased production costs can probably be attributed in part to better adjustment to the innovation of sound, but the impact of the depression was probably beginning to be felt.

TABLE VI

Total Cost of Production, for Census Years, 1921-1933
(In thousands)

Year	Cost of Production	Per Cent Change from Preceding Year
1921	$77,397	---
1923	86,418	+ 11.7
1925	93,636	+ 8.4
1927	134,343	+ 43.5
1929	184,102	+ 37.0
1931	154,436	- 16.1
1933	119,343	- 22.7

Source: Census of Manufactures, 1929 and 1933, "Motion Pictures, not Including Projection in Theatres."

Volume of Production

Total Domestic and Foreign Releases. - Table VII shows the total number of features released in the United States for the years 1927 to 1934. Data are presented to show how many of the total releases were foreign features and how many were made by American producers. During the years 1932, 1933, and 1934, the proportion of foreign pictures releases was greater than in most of the prior years. In 1934 the number of foreign features shown in this country amounted to 27.5 per cent of the total.

TABLE VII

Number of Domestic and Foreign Motion Picture Features Released In the United States, 1927-1934

Year	Total		Domestic Features		Foreign Features	
	Number	Per Cent of Total	Number	Per Cent of Total	Number	Per Cent of Total
1927	743	100.0	668	89.9	75	10.1
1929	820	100.0	627	76.5	193	23.5
1929	850	100.0	705	82.9	145	17.1
1930	600	100.0	514	85.7	86	14.3
1931	627	100.0	505	80.5	122	19.5
1932	685	100.0	489	71.4	196	28.6
1933	644	100.0	507	78.7	137	21.3
1934	662	100.0	480	72.5	182	27.5

Source: Film Daily Yearbook of Motion Pictures, 1935.

Production of "Features." - Table VIII shows the number of features produced from 1927 through 1934. Attention is directed to the high number of releases by major companies in 1927 and the gradual decline through 1932, with the subsequent moderate rise. During these years the major companies averaged almost 70 per cent of the total number of feature pictures released.

TABLE VIII

Features Released by Major and Independent Domestic Companies a/

Year	Total		Kind of Company			
			Major		Independent	
	Number	Per Cent of Total	Number	Per Cent of Total	Number	Per Cent of Total
1927	668	100.0	510	76.3	158	23.7
1928	627	100.0	462	73.7	165	26.3
1929	705	100.0	393	55.7	312	44.3
1930	514	100.0	362	70.4	152	29.6
1931	505	100.0	324	64.1	181	35.9
1932	489	100.0	318	65.0	171	35.0
1933	507	100.0	338	66.7	169	33.3
1934	480	100.0	361	75.2	119	24.8

Source: Film Daily Yearbook of Motion Pictures, 1935.

a/ During 1927-1931, ten companies listed; during 1932-1934, eight companies listed.

TABLE VIII - A

FEATURES RELEASED BY MAJOR COMPANIES, 1927 - 1934

	1927	1928	1929	1930	1931	1932	1933	1934
Columbia	25	32	22	29	31	29	32	43
Film Booking Offices a/	53	62	--	--	--	--	--	--
First National	55	53	45	37	30	b/	b/	b/
Fox Film Corp.	50	49	53	48	48	40	50	52
Metro-Goldwyn-Mayer	51	52	52	47	46	39	42	43
Paramount	78	64	68	64	62	65	58	55
Pathe	78 c/	53	24	14	--	--	--	--
R.K.O. Pathe	--	--	--	--	14 d/	--	--	--
R.K.O. Radio Pictures	--	--	35	32	33	46	48	46
United Artists	11	15	17	16	13	14	16	20
Universal Pictures	66	56	41	36	23	30	37	44
Warner Bros.	43	26	36	39	24	b/	b/	b/
Warner Bros. First National	--	--	--	--	--	55	55	58
Totals	510	462	393	362	324	318	338	361

Source: Film Daily Yearbook of Motion Pictures, 1935.

a/ Film Booking Offices taken over by R.K.O. in 1929
b/ Warner Bros. and First National Releases combined in this tabulation since 1932
c/ Including 31 P.D.C. films.
d/ Released through R.K.O. Radio.

Production of "Shorts." - Table IX shows the estimated number of "Short Subjects," of one or two-reel length, produced for the years 1930-1931 through 1934-1935. The table does not include newsreels produced annually by each of the five major companies, or approximately 20 reels.

TABLE IX

Total Number of Shorts Produced,
1930-1931 to 1934-1935

Season	Number
1930-1931	1,286
1931-1932	1,372
1932-1933	1,297
1933-1934	1,062 a/
1934-1935	956 a/

Source: Compiled from data in the Motion Picture Almanac.

a/ Estimated on basis of announced plans of companies.

"Box-Office Rating" of Producers

The relative quality and importance of the production of the eight major producers may be ascertained from an examination of Table X, which shows the estimated "box-office strength" of feature pictures produced by the major producers in comparison with the feature pictures produced by the independent producers.

Each feature release is assigned a weight, according to indicated box-office potency, and a weighted average for the entire year is then computed. A perfect score of 1,000 would result only if every film of a producer were given a "Hit" rating.

It will be seen from the table that United Artists and Loew's (MGM) received the highest box-office ratings in both 1933 and 1934. In 1934 they received 762 and 552 respectively. In the same year, independent companies received an average rating of 164.

TABLE X

Estimate of Box Office Strength of Feature Pictures, for Each of Eight Major Companies and All Independents, 1933 and 1934

Company	1933	1934
United Artists	583	762
Loew's (MGM)	582	552
Warner Brothers	486	429
R.K.O.	395	433
Paramount	380	508
Fox Film	368	446
Universal	362	366
Columbia	260	302
Average	424	453
Independents	175	164

Source: Standard Statistics Company, Standard Trade and Securities, "Theatre and Motion Pictures," Vol. 75, No. 22 (February 20, 1935) p. TH-48.

PART II: PRODUCTION

Chapter II. Labor Statistics

Total Number of Employees

Table XI shows the average annual number of employees, in the production division as reported by the Census of Manufactures. The Motion Picture Almanac has estimated the total employment as 30,000 in 1933, compared with the Census figure of 19,037 for the same year.

TABLE XI

Average Annual Number of Salaried Employees and of Wage Earners

	1929	1931	1933
Salaried Employees	8,818	--	8,260
Wage Earners	10,784	--	10,777
Total	19,602	14,839 a/	19,037

Source: Census of Manufactures, 1933, "Motion Pictures, Not Including Projection in Theatres."

a/ Figures for 1931 are incomplete and not comparable with figures for other years.

Number of "Extras"

There are no accurate data as to the total number of "extras" employed in the Industry. Mr. Allen Garcia, representing extras, stated at the hearing on the proposed Code that the total number of this type of employee registered and available has been variously estimated as between 8,000 and 14,000 annually. 1/

In addition, complete data are not available as to the total number of placements of extras, but Table XII shows the number of such placements made by the Central Casting Corporation, the leading employment agency for obtaining jobs for this type of employee. The number reported by this agency is considered to represent a great majority of the total number of placements.

1/ Transcript of NRA Hearing, Motion Picture Industry, September 12, 1933.

TABLE XII

Number of Placements and Wages
of "Extras" Registered with the
Central Casting Corporation
1926-1934

Year	Placements		Wages	
	Total Number	Average Daily Number a/	Total Annual (000's)	Average Wage per Placement
1926	259,259	710	$2,195	$8.46
1927	330,397	905	2,838	8.59
1928	276,155	758	2,470	8.94
1929	262,958	840	2,401	9.13
1930	252,446	807	2,460	9.74
1931 b/	177,523	621	1,658	9.34
1932 c/	176,785	677	1,545	8.74
1933	251,914	805	2,049	8.14
1934	219,857	705	1,985	9.03

Source: Motion Picture Almanac, "Annual Report of the Central Casting Corporation."

a/ Total number of placements divided by total number of days, exclusive of Sundays.

b/ Data for 1931 are for the first eleven months of the year.

c/ Data for 1932 are for the first ten months of the year.

Seasonal Variation in Employment

Data on seasonal variation of employment in the production division of the Industry, which are presented for the years 1929 and 1933 in Table XIII, show relatively low employment in the first four months of each year. Production for the summer selling season begins around May, and producers usually attempt to start work on special features at that time in order to further their sales efforts. In 1929 and 1933 employment was higher in the last six months of the year, with maximum employment occurring in September.

Table XIII also shows that during the last four months of 1933, employment was generally about 15 per cent higher than in 1929. This increase may be partially attributed to a decrease in hours and subsequent increase in the number of wage earners under the "President's Re-employment Agreement."

TABLE XIII
Number of Wage Earners, by Months, 1929 and 1933

Month	1929		1933	
	Number	Index (Annual average=100)	Number	Index (Annual average=100)
January	9,929	92	9,592	89
February	9,694	90	9,567	89
March	9,113	84	8,592	80
April	9,560	89	8,547	79
May	10,722	99	7,880	73
June	10,805	100	9,212	85
July	11,422	106	10,491	97
August	11,616	108	11,821	110
September	11,938	111	13,734	127
October	11,506	107	13,627	126
November	11,690	108	13,310	124
December	11,407	106	12,947	120
Average	10,784	100	10,777	100

Source: Census of Manufactures, 1929 and 1933, "Motion Pictures, not Including Projection in Theatres."

Total Annual Wages

Table XIV shows the total salaries and wages paid in 1929 and 1933 as reported by the Census of Manufactures. Comparison of the years 1929 and 1933 indicates that the reported total compensation decreased from $85,028,000 to $71,343,000, or 16 per cent, salaries decreased approximately 12 per cent, and wages dropped about 26 per cent. The decline in total salaries was accompanied by a somewhat smaller decrease in the number of salaried employees, but since the 26 per cent decline in total wages was accompanied by practically no change in the number of wage earners, there must have occurred marked cuts in wage rates and/or a considerable substitution of part-time for full-time workers. (See Table XI, above.)

It may also be seen from Table XIV that salaried employees enjoyed a larger proportion of the total compensation in 1933 than in 1929. Salaries represented approximately 71 per cent of the total compensation in 1929 and about 74 per cent in 1933, while wages as a percentage of total compensation decreased from about 29 per cent to approximately 26 per cent.

TABLE XIV

Total Annual Salaries and Wages, 1929 and 1933

Kind of Compensation	1929 Amount (000's)	1929 Per Cent of Total	1933 Amount (000's)	1933 Per Cent of Total	Per Cent Change 1929-1933
Total	$85,028	100.0	$71,343	100.0	- 16.1
Salaries	60,168	70.8	52,948	74.2	- 12.0
Wages	24,860	29.2	18,395	25.8	- 26.0

Source: Census of Manufactures, 1933, "Motion Pictures, not Including Projection in Theatres."

Annual Wages by Principal States

Table XV shows the annual wages paid in 1929 and 1933 in the three principal producing states. California accounted for 79 per cent of the total in 1929 and 84 per cent in 1933. New York declined in importance from 1929 to 1933, for it accounted for 15 per cent of the total in 1929 but only 11.5 per cent in 1933.

TABLE XV

Annual Wages, by Three Principal States, 1929 and 1933

State	1929 Wages (000's)	1929 Per Cent of Total	1933 Wages (000's)	1933 Per Cent of Total
U. S. Total	$24,860	100.0	$18,395	100.0
California	19,584	78.8	15,460	84.0
New York	3,649	14.7	2,111	11.5
Illinois	216	.9	185	1.0
Total, 3 States	23,449	94.4	17,756	96.5
Total, Other States	1,411	5.6	639	3.5

Source: Census of Manufactures, 1929 and 1933, "Motion Pictures, Not Including Projection in Theatres."

Salaries and Wages as a Per Cent of Cost of Production

Table XVI shows the per cent of total cost of production spent for wages in 1929 and 1933. The 1929 wage cost of $24,860,000 dropped to $18,395,000 in 1933, but as a per cent of total cost of production, it

increased from 13.5 per cent in 1929 to 15.4 per cent in 1933, or a gain of 14 per cent. While the annual salaries paid in 1929 decreased from $60,168,000 to $52,948,000, the per cent of total cost of production which these figures represent rose from 32.7 per cent in 1929 to 44.4 per cent in 1933 or a gain of 36 per cent.

TABLE XVI

Total Cost of Production, Annual Salaries and Annual Wages
1929 and 1933

Year	Total Cost of Production (000's)	Total Salaries and Wages		Salaries		Wages	
		Amount	Per Cent of Total Cost	Amount (000's)	Per Cent of Total Cost	Amount (000's)	Per Cent of Total Cost
1929	$184,102	$85,028	46.2	$60,168	32.7	$24,860	13.5
1933	119,343	71,343	59.8	52,948	44.4	18,395	15.4

Source: Census of Manufactures, 1933, "Motion Pictures, Not Including Projection in Theatres".

Wages of Extras

Table XII above indicates the average wage per extras placed by the Central Casting Corporation. These figures were derived by dividing the total annual wages by the total number of placements. It must be understood that the average wage per placement as shown does not represent the average wage of all registered extras, but merely of those placed by this particular agency.

Table XVII indicates the reduction between 1930 and 1933 in the number of extras, as placed by the Central Casting Corporation who received high daily wage rates. In the former year three-fourths of the placements reported in the table received $10.00 per day while in 1933 only one-third were placed at this rate. The number receiving daily wages of $5.00 increased from 24 per cent to 40 per cent while the number in the $3.00 wage class increased from .1 of one per cent in 1930 to 27 per cent in 1933.

TABLE XVII

Distribution of Placements of Extras by the Central Casting Corporation at Specified Daily Wage Rates, 1930 and 1933 a/

Daily Wage Rate	1930 Number	1930 Per Cent of Total	1933 Number b/	1933 Per Cent of Total
Total	143,209	100.0	126,934	100.0
$3.00	206	.1	34,386	27.0
5.00	34,075	23.8	51,102	40.3
10.00	109,128	76.1	41,446	32.7

Source: Transcript of NRA Hearing, Motion Picture Industry, September 12, 1933.

a/ The number of placements does not represent the total number of extras placed, but covers only those placements made at the wage rates shown.

b/ Estimated by prorating the placements for the first half of 1933.

Average Hourly Wage Rate

There are no accurate average figures available which represent the composite hourly wage rate for all classes of wage earners in the production division of the Industry. The minimum hourly wage rate specified in the Code for all classes of employees was 40 cents. The range in minimum rates for various classes of studio mechanics and laboratory workers was from 60 cents to $2.25 per hour. Reports of the Research and Planning Division of NRA and from the Division Administrator's Office have indicated that the Code rates represented an estimated increase of approximately 15 per cent over the 1929 rates. It is believed that the increases applied mainly in the lower wage brackets, where labor is largely unorganized.

Average Hours Worked per Week

Table XVIII gives the prevailing hours of labor per week in the production division of the Industry for the year 1929. More than 60 per cent of the total number of establishments worked their employees between 45 and 48 hours per week. The total number of wage earners in this group amounted to 86 per cent of the total number of wage earners. Only .1 of one per cent of the wage earners worked 48 hours or more per week.

TABLE XVIII

Number of Establishments and Number of Wage Earners, Classified by Number of Full-Time Hours Worked per Week, 1929

Number of Hours per Week	Establishments		Wage Earners	
	Number	Per Cent of Total	Number	Per Cent of Total
Total	135	100.0	10,742	100.0
40 hours or less	5	3.7	100	.9
40 - 45 hours	41	30.4	1,357	12.6
45 - 48 hours	82	60.7	9,278	86.4
48 hours or more	7	5.2	7	.1

Source: Compiled from Census of Manufactures, 1929, Vol. I, Table VI, "Motion Pictures, not Including Projection in Theatres".

Child Labor

Child labor is not an important problem in the Industry. In 1930, 2,213 helpers in motion picture production were reported by the occupation statistics of the Census of Population, but only 93 of these helpers were between the ages of 10 and 17 years. It must be borne in mind that these data refer not to the number actually employed, but rather to the number reporting themselves as belonging, by occupation, to this Industry.

Employees by Principal States

Total Employees. - Table XIX shows the average annual number of salaried employees and wage earners by three principal states for 1929 and 1933. There was an increase in California from 77.4 per cent of the total in 1929 to 86.2 per cent in 1933, a gain of 11 per cent. New York showed a large decrease, from 14.5 per cent of the total to 9.2 per cent, or a loss of 36 per cent. These two states alone employed over 90 per cent of the workers in each of these years.

TABLE XIX

Average Annual Number of Employees, by Three Principal States, 1929 and 1933 a/

State	1929		1933	
	Number	Per Cent of Total	Number	Per Cent of Total
U. S. Total	19,602	100.0	19,037	100.0
California	15,167	77.4	16,417	86.2
New York	2,850	14.5	1,748	9.2
Illinois	202	1.0	162	.9
Total, 3 States	18,219	92.9	19,037	96.3
Total, Other States	1,383	7.1	710	3.7

Source: Census of Manufactures, 1929 and 1933, "Motion Pictures, not Including Projection in Theatres".

a/ Includes wage earners and salaried employees.

Wage Earners. - Table XX shows wage earners, by principal states, for 1929 and 1933. In 1929 California accounted for 74.6 per cent of total wage earners; in 1933, 83.7 per cent, representing a gain of 12 per cent. New York again showed a large decline from 15.7 per cent of the total to 10.7 per cent, or a loss of about one-third. These two states alone employed more than 90 per cent of the wage earners in 1929 and 1933.

TABLE XX

Average Annual Number of Wage Earners, by Three Principal States, 1929 and 1933

State	1929		1933	
	Number of Wage Earners	Per Cent of Total	Number of Wage Earners	Per Cent of Total
U. S. Total	10,784	100.0	10,777	100.0
California	8,052	74.6	9,022	83.7
New York	1,695	15.7	1,149	10.7
Illinois	82	.8	108	1.0
Total, 3 States	9,839	91.1	10,279	95.4
Total Other States	955	8.9	498	4.6

Source: Census of Manufactures, 1929 and 1933, "Motion Pictures, not Including Projection in Theatres."

PART II: PRODUCTION

Chapter III. Materials

Cost of Principal Materials Used

The principal material used in the production division of the Industry is raw film, purchased from the Eastman Kodak Company, the Dupont Film Manufacturing Corporation, and from a few foreign countries, principally Germany, France, and England.

Table XXI shows the total cost of materials, fuel, and purchased electric energy used by the production division of the Industry in 1929, 1931, and 1933. This cost averaged about 21 per cent of the total cost of production in each of the years shown.

TABLE XXI

Total Cost of Production and Cost of Materials, Fuel, and Purchased Electric Energy

Year	Total Cost of Production (000's)	Cost of Materials,[a/] Fuel, and Purchased Electric Energy	
		Amount (000's)	Per Cent of Total Cost
1929	$184,102	$38,441	20.9
1931	154,436	32,222	20.9
1933	119,343	26,153	21.9

Source: Census of Manufactures, 1933, "Motion Pictures, not Including Projection in Theatres."

a/ Materials consist of miscellaneous studio supplies and containers for films.

Source of Equipment and Supplies

Table XXII shows the number of establishments producing photographic apparatus and supplies by states for 1929, 1931, and 1933. It must be understood that these data pertain to the entire production of such material and not just to that used by the Motion Picture Industry.

TABLE XXII

Number of Establishments Producing Photographic Apparatus and Supplies, by Principal States

States	1929	1931	1933
U. S. Total	115	110	84
California	11	8	5
Illinois	21	24	17
Indiana	3	4	3
Massachusetts	4	3	a/
Michigan	3	2	3
Minnesota	4	3	a/
Missouri	8	7	5
New York	35	32	a/
Ohio	5	3	3
Pennsylvania	14	14	7
Total, 10 States	108	100	43
Total, Other States	7	10	41

Source: Census of Manufactures, 1929, 1931, and 1933, "Photographic Apparatus and Supplies." Census data do not include establishments having an annual production of less than $5,000.

a/ Not reported separately in 1933.

PART II: PRODUCTION

Chapter IV. Unfair Trade Practices

Enticement of Talent and Activities of Agents

The problem of salaries of stars and the activities of agents are the only two significant trade practice problems which may be clearly allocated to the production division of the Industry.

This division centers about a relatively small group of personalities -- such as actors, directors, writers, and technicians -- who have become known through advertising, publicity, and other methods. The removal of a personality often seriously disrupted production until a suitable replacement could be found or developed.

New companies usually found it more profitable to employ talent already developed and secured such individuals by offers of higher salaries. Long-term contracts did not solve the problem of "star-raiding," because competing exhibitors, desirous of acquiring the services of such talent, induced the breaking of existing contracts. Moreover, offers of higher salaries from competitors unquestionably produced psychological effects which tended to decrease the quality of the stars' work and in extreme cases rendered them worthless. Complete contentment necessary for quality work was usually reestablished only when the employer equalled the competitive offer which, in some cases was not definite enough properly to be called an offer.

PART II: PRODUCTION

Chapter V. General Information

Exports

Table XXIII shows the exports of total linear feet of film for the years 1929 through 1934. No figures are available on the value of such films other than the declared value, which is based largely on quantity rather than on exhibition value.

TABLE XXIII

Exports of Motion Picture Films, 1929-1934 a/
(In thousands)

Year	Total Linear Feet
1929	282,216
1930	274,251
1931	199,690
1932	160,773
1933	164,537
1934	194,434

Source: Motion Picture Almanac; as prepared by the Bureau of Foreign and Domestic Commerce.

a/ Includes negative and positive sound and silent films.

Advertising

The Motion Picture Almanac has estimated that the Industry as a whole spends $70,000,000 annually for advertising in newspaper, magazines, billboards, radio, and other media. No figures are available relative to the amount spent by the producers.

Productive Capacity

No adequate measures of the productive capacity of the Industry exist. Production schedules are determined largely by the demand from the exhibition division.

Trade Associations

Motion Picture Producers and Distributors of America, Inc. (MPPDA). - This organization, of which Will H. Hays is President, was formed in 1922. It is composed of more than twenty companies, including the so-called "Big 8" producers and distributors. It furnishes information on all Industry

matters and serves as a coordinating agency in industrial relationships and functions as interpreter of problems and policies of public interest. It also represents the Industry in connection with all sorts of "anti" legislative measures which are a constantly recurring plague to the Industry. Its members find it an economical means of gathering useful information, and of securing necessary services and facilities.

The Academy of Motion Picture Arts and Sciences. - This organization which is a guild-like association of the production branch of the Industry, was organized in 1927 to deal with production problems. The Academy is controlled and financed by the producers. It has provided methods of adjustment and reconciliation among producers as well as between producers and their various classes of employees. It has attempted to bring about industry-wide technical coordination by educational campaigns designed to reach all concerned therein, and has served as a clearing house for the collection of technical data in production. Its public-relations efforts have been focused towards contacting survey experts, special organizations, and manufacturing and research concerns, rather than the press and the public.

Trade Union Activity

The Actor's Equity Association which is chartered by the Associated Actors and Artists of America and affiliated with the American Federation of Labor has jurisdiction in the motion picture field. Its offices are located in New York, Chicago and Hollywood. In 1933, the Association had 1,418 members. These consist of both actors and actresses who had received screen credit (i.e. listing in cast of pictures) or professional recognition.

PART III: DISTRIBUTION

Chapter I. The Nature of the Division

History and Scope of Division

Origin of Film Exchange. - During the Industry's formative stages, films were purchased outright from producers and exhibited until worn out or until they ceased to be profitable. This system later gave way to a more efficient and economical method of distribution known as the film exchange, which was introduced in 1902 by Harry J. Miles of San Francisco. This system originated in the functions of maintaining film stocks, which requires the supervising and physical transportation of film, and the inspection and repair of damaged film. The film exchange is in essence a licensing system whereby the films remain the property of the exchange, and the exhibitor merely obtains a license to show a particular film in a designated theatre for a stipulated period of time, at a charge equal to about half the purchase price.

Developments in Film Distribution. - In the early stages, positive films were sold by length on a flat footage basis regardless of the individual picture, actor, or director. No consideration was given to the number of pictures leased, character and size of theatre, and the population of the town or city. There were no distinctions made between first or subsequent runs.

The distributors developed what was known as the "program system," supplying the exhibitor with a constant flow of two or three-real pictures, two or three time per week, The public appreciation for better-quality films gave rise to the "star" system, and demands for longer programs featuring such stars Pickford, Hart, and Sennett. The exploitation of stars and concomitant efforts to attain quality by purchases of expensive scenarios and production extravaganda brought on the full-length feature, absorbing the greater part of the entertainment program. Rising production costs led to an upward revision of leasing charges and eventually to the general adoption of a policy of block booking by the distributors.

Another development was the construction of theatres exclusively for the showing of motion pictures, displacing arcades, shooting galleries, and empty stores as well as legitimate and vaudeville theatres.

With the development of the "star" and the "feature" system which gave the pictures individuality, and the construction of theatres exclusively for motion pictures which resulted in more efficient and economical presentation, distributors began to vary the prices of pictures according to their estimated value. Pictures were no longer sold at random on a flat footage basis. Wider geographical distribution came to be considered necessary since it was found that first showings usually exhausted considerable exhibition value of a picture in localized areas. Thus nation-wide facilities for merchandising, rehandling, and servicing a product, which varied in price and quality, became necessary.

National and "State Right" Distribution. - The first effort to attain effective national distribution was made by the formation in 1910 of the General Film Company, controlled by the Motion Picture Patents Company. Independent producers, who were not permitted to use these facilities, distributed chiefly through independent distributors. These distributors, who were scattered

throughout the country, operated on a "state right" basis. The state right exchanges bought films outright or more commonly leased films with the exclusive right of redistributing them to exhibitors within certain geographical areas.

Most state right distributors were also exhibitors whose original purposes were to obtain films for their own theatres, their interest in complete distribution being often less than casual. Moreover, since no producer could supply sufficient product to furnish the entire requirements of the average exhibitor, state right distributors were naturally interested in obtaining films from more than one producer, and this diversity of interest usually resulted in mediocre sales, service and maintenance efforts from the point of view of the producers. Aggressive selling efforts necessary for intensive distribution were lacking. Rentals received from films were not believed to be commensurate with their earning power. The producer, on the other hand, could not set prices for the distributors' subleasing of film but received what the latter would pay for it. He usually found out a picture's value in a given territory after it was too late to capitalize on it.

Producers as Film Distributors. - Unlike conditions in the manufacturing industries, the cost of the production of a motion picture has usually little direct relation to its sales value. Consequently the producer soon realized the great importance of obtaining proper control of distribution. Integration with production was inevitable since producers were placed in the position of having the value of their product determined to a large extent by distributors. Consequently, producers with sufficient financial resources generally pursued the policy of obtaining control of distribution.

Present-Day Film Distribution. - The actual process of distribution involves the licensing of the exhibitor to show copy-righted film, assigning playing dates, physical distribution of films to theatres, and the collection of accounts. Advertising material for the pictures to be shown is usually sold in conjunction with the licensing of films. Exchanges are located in key cities throughout the United States. The 50 to 250 positive prints made from the exposed negative are distributed to first-run, second-run, and subsequent-run theatres in proper order and point of time according to contractual specifications. Rental variations extend from as low as $5 per day to several thousand dollars per week, while percentage agreements may call for 10 per cent to 50 per cent of the box office receipts. Combinations of both forms are not uncommon. Another arrangement sometimes used allows the exhibitor a sum to defray current operating expenses and the surplus is then split according to agreement. The rental charge is governed primarily by the exhibitor's ability to pay, which, in turn, depends upon a variety of factors, chief among which is the estimated box-office receipts, based upon previous experiences with the star and cast in some comparable vehicle. Other factors are seating capacity, number of performances per day, price of admission, character of accompanying presentation, prestige of the theatre, and efforts made for exploitation.

All the "major" companies maintain distributing establishments in "key" centers throughout the United States. Small independent producers often distribute their films through the facilities of the large producer-distributors.

Total Number of Exchange Establishments

The total number of exchange establishments in 1929 was reported by the Census as 533. (See Table XXIV, Below).

Number of Exchange Establishments by Principal States

Table XXIV shows the distribution of the 533 exchanges by six principal states in 1929. New York accounted for almost 16 per cent of the total number, California and Pennsylvania each had more than 6 per cent. Ohio, Massachusetts and Illinois follow in the order mentioned, each having about 4 per cent of the total number of exchanges within their borders. The six states accounted for 42 per cent of the total number for the country.

TABLE XXIV

Number of Exchanges and Volume of Business Handled, by Six Principal States, 1929

State	Exchanges		Volume of Business	
	Number	Per Cent of Total	Amount (000's)	Per Cent of Total
U. S. Total	533	100.0	$220,605	100.0
California	36	6.8	16,057	7.3
Illinois	21	3.9	14,962	6.8
Massachusetts	23	4.3	13,283	6.0
New York	85 a/	15.9	51,581	23.4
Ohio	26	4.9	13,326	6.0
Pennsylvania	34	6.4	25,097	11.4
Total, 6 states	225	42.2	134,306	60.9
Total, Other States	308	57.8	86,299	39.1

Source: Census of Distribution, 1929 "Motion Picture Films" (Trade Series, Distribution No. M-201).

a/ Includes 14 export exchanges.

Volume of Business by Principal States

Table XXIV, above also shows the volume of business done by these six principal states in 1929. New York, which had the largest number of exchanges accounted for more than 23 per cent of the total exchange business (including exports by the 14 New York City exchanges which engaged in export business exclusively.) Pennsylvania was the second most important state in 1929, accounting for about 11 per cent of the total business; California accounted for 7 per cent of the business; and Illinois, Massachusetts, and Ohio, averaged a little more than 6 per cent each.

It is noteworthy that these six states containing less than 38 per cent of total population of United States accounted for more than 60 per cent of the total volume of the motion picture distributing business.

Number of Establishments by Type of Exchange

With the development of large chain theatres, the vertical integration of producers with theatre chains, and the growing financial strength of producing companies, the independent distributor has become less significant. Producers now either associate with existing distributors or more often establish their own distinct exchanges. In 1929, according to Table XXV, producers exchanges totalled 444 in number or 83 per cent of the total. Next in importance to the exchanges owned by producers were the independent exchanges, comprising 14 per cent of the total. The export exchanges numbered 14, or less than 3 per cent of the aggregate, and 4 of these were owned by producers.

TABLE XXV

Number of Exchanges, and Number of Employees, by Principal Types of Exchanges, 1929

Item	Total		Type of Exchange					
			Producer		Independent		Export	
	Number	Per Cent of Total	Number	Per Cent of Total	Total Amount	Per Cent of Total	Total Amount	Per Cent of Total
Number of Exchanges	533	100.0	444	83.3	75	14.1	14	2.6
Number of Employees	9342	100.0	8797	94.2	393	4.2	152	1.6

Source: Census of Distribution, 1929, "Motion Picture Films" (Trade Series, Distribution No. W-201.)

Volume of Business by Type of Exchange

Table XXVI shows that in 1929 the producers exchanges did most of the business, for they accounted for 95 per cent of the total. Furthermore, the 4 export exchanges owned by the latter contributed an additional $5,518,000 worth of business or almost 2.5 per cent of the total volume.

Next in importance to the exchanges owned by producers were the export exchanges which carried on a business amounting to 3 per cent, 2⅓ per cent of which, as mentioned above, was done by the 4 exchanges owned by the producers. The independents accounted for only about 2 per cent of the total.

TABLE XXVI

Volume of Business, Salaries, Wages and Total Expenses,
by Principal Types of Exchanges, 1929

Item	Total		Type of Exchange					
			Producer		Independent		Export	
	Amount (000's)	Per Cent of Total	Amount (000's)	Per Cent of Total	Amount (000's)	Per Cent of Total	Amount (000's)	Per Cent of Total
Volume of Business	$220,605	100.0	$208,866	94.7	$4,905	2.2	$6,844	3.1
Salaries & Wages	17,978	100.0	16,563	92.1	854	4.8	561	3.1
Total Expenses	34,640	100.0	31,654	91.4	1,625	4.7	1,361	3.9

Source: Census of Distribution, 1929, "Motion Picture Films" (Trade Series, Distribution, No. 7-201).

Key City or Exchange	(States) Territory Served by Key City
NEW HAVEN	Connecticut
NEW ORLEANS	La., parts of Ala., Ark., Fla., Miss.
NEW YORK	Long Island, Greater N.Y. City, N.Y. State as far North as Poughkeepsie, and Northern N. Jersey.
OKLAHOMA CITY	Oklahoma
OMAHA	Most of Neb., parts of Ia. and S.D.
PHILADELPHIA	Eastern Pa., So. N. Jersey, Delaware
PITTSBURGH	Western Pa. and part of West Va.
PORTLAND, ORE	Most of Ore. and parts of Cal., Ida. and Wash.
ST. LOUIS	Southern Ill., East. Mo., part of Ky.
SALT LAKE CITY	Parts of Utah, Ida., Mont., Nev., Ore., Wyo., Ariz., Wash., Colo. both Dakotas.
SAN FRANCISCO	Parts of Cal., Ore. and Nev.
SEATTLE	Alaska and parts of Wash. and Ida.
WASHINGTCN, D.C.	D. of C., Maryland, parts Del., Va., and W. Va.

PART III: DISTRIBUTION

Chapter II. Labor Statistics

Average Annual Number of Employees

Census data as presented in Table XXVII place the average annual employment of all exchanges at 9,342 in 1929. Of these, about 20 per cent were executives or salesmen.

Total Number of Employees by Types of Exchanges

As shown in Table XXV, above, producers' exchanges reported 8,797, or 94 per cent of the total number of employees. Independent exchanges employed 4 per cent, and the export group accounted for less than 2 per cent of the total.

Average Annual Payrolls

According to Table XXVII, the average annual payroll covering all employees was $17,978,000 in 1929. Executives, who constituted less than 4 per cent of total employees, received almost 14 per cent, while the salesmen, amounting to 17 per cent of the total number, received 35 per cent of the total payroll. The remaining employees, who constituted almost 80 per cent of the total employees, received 51 per cent of the total payroll.

TABLE XXVII

Average Annual Number of Employees and Average Annual Payrolls, 1929

Kind of Employee	Employees		Payrolls	
	Number	Per Cent of Total	Amount (000's)	Per Cent of Total
Total	9,342	100.0	$17,978	100.0
Executives	335	3.6	2,468	13.7
Salesmen	1,562	16.7	6,253	34.8
Other Employees	7,445	79.7	9,257	51.5

Source: Census of Distribution, 1929, "Motion Picture Films" (Trade Series, Distribution No. T-201).

Per Cent Salaries and Wages are of Total Expense

In 1929 salaries and wages constituted the largest single item of expense, amounting to about one-half of total expenses for all types of exchanges. In both the producer and independent type of exchange, total salaries and wages accounted for about one-half the total expenses, but in the export exchanges, this percentage was somewhat less. (See Table XXVI, above.)

PART III: DISTRIBUTION

Chapter III. Unfair Trade Practices

Block Booking and Blind Booking.

"Block booking" and "blind booking", which involve the purchase of films sight unseen, has long been existent in the Industry. Producer-distributors have maintained that this method is economically sound, inasmuch as it assures exhibitors a continuous supply of films while at the same time stabilizing production. Individual selections, it has been claimed, would result in prohibitive license fees, since all pictures are not box-office successes. The impossibility of pre-judging box-office attractions has also been pointed out.

The opponents of block booking and blind booking, who are mostly independents, have claimed that these practices have forced them to show undesirable pictures. These independents have had the support of social, religious, and educational organizations which have realized that independents would probably be ruined financially if they were to refrain from showing, yet be forced to pay, for all unendorsed pictures.

The "right to buy" controversy appears to have been concerned primarily with preferential master contracts existing between producer-exhibitors. It has been alleged by independents that certain producer-exhibitors having competition in a specified area are given unfair advantage by being permitted to purchase films of other producer-exhibitors at lower prices than those at which the former's competitors are permitted to buy -- if they are permitted to buy at all. In return the latter producer-exhibitors received this low rate preference from the former when they have competition from indegendents in their areas.

Independents who have thus been unable to compete with the large circuit and producer-affiliated theatres for the purchase of first-run pictures have been at a further disadvantage because of the fact that these producer-affiliated theatres have exchanged their playing time among themselves. This has resulted in forcing the independents to show subsequent run pictures.

While exhibitors have sought the "right to buy" first runs irrespective of the character of theatre, location, size, quality of accompanying presentations, or prestige and standing enjoyed in the community, producer-distributors have claimed the "right to choose" their customers. They have sought to bring out their features under the most favorable auspices in theatres having established reputations and the best and finest quality presentation in the country. They claimed the right to determine the factors that go into a bargain, such as the financial responsibility of the buyer.

It is generally understood by the independents that the "right to choose" customers, provided no collusion exists, has been found justified by the Federal Trade Commission, as shown by the following quotation from Federal Trade Commission versus Paramount Famous Players Corporation, 57 Fed. 152:

> "A distributor of films by lease or sale has the right to select his own customers and sell such

quantities at given prices, or to refuse to sell at all to any particular person for reasons of his own. Federal Trade Commission versus Raymond Bros.-Clark Co., 263 U. S., 565; U. S. versus Colgate, 250 U. S., 30; Great A & P versus Cream O'Wheat, 227 Fed. 46 (C.C.A.2)."

Forcing Short Subjects with Features

Forcing the purchase of short subjects as a condition for contracting of features has been a long-established practice in the Industry. Exhibitors have claimed that in some instances requirements were exacted which forced them to buy more shorts than they could reasonably be expected to show. Distributors have contended that this was a long-established selling method and that their investment was based upon the "tying in" of the sale of short subjects. They have claimed further that the cost of features was directly related to the total sales made and that interference with the usual practice would result in an increase in the cost of features. Distributors claimed moreover, that they were providing the exhibitors with a well-balanced program

Overbuying

It has been generally admitted that certain financially well-entrenched exhibitors have sometimes contracted for more motion pictures than they reasonably required for exhibition in their own theatres with the intent of depriving a competing exhibitor from securing sufficient pictures for exhibition in his theatre. This practice has been generally recognized by the Industry as unfair.

PART III: DISTRIBUTION

Chapter IV. General Information

Trade Association Activity

Film Boards of Trade, which constitute local distributor trade association, were established in 1922 as the field organization of the Motion Picture Producers and Distributors of America. These boards exist in 32 key city exchange centers.

The Film Boards keep sales managers advised of changes in theatre ownership. During the transition period from the silent to the sound pictures, the Boards supplied distributors with information relative to the equipment used by various exhibitors. The Boards also locate lost and stolen films, check up on "missouts," determine responsibility for film mutilations and delayed returns of prints, and attend to various other routine matters in the interest of their members.

PART IV: EXHIBITION

Chapter I. The Nature of the Division

History and Description of Division

The Development of Motion Picture Theatres. - The exibition division of the Motion Picture Industry corresponds to the retail branch of manufacturing industries. It started with the "store-room" show, composed of short-reel entertainment with 5 cents as an admission charge. The seating capacity of these "store-rooms" was anywhere from 100 to 200. At a later date the seating capacity at "store-room" shows was enlarged from 200 to 300, and the entertainment program was lengthened. The price of admission was then raised to 10 cents.

Construction of buildings in great numbers, for the exclusive purpose of showing moving pictures soon followed. The seating capacities of these movie houses ranged from 300 to 600, and again the entertainment was lengthened and the price of admission increased, this time to 20 cents.

At this point, promoters entered into the business and adopted various methods of obtaining capital with which to build lavish theatres, some of which had seating capacities ranging up to 5,000 seats. The building of these large "de luxe" theatres on a grand scale required substantial public financing, which meant that the promoters had to turn to bond issues and eventually to Wall Street for the necessary financing.

The Development of the Entertainment Program. - The construction of de luxe theatres required more lavish motion pictures in order to operate the picture houses profitably, and it thus became necessary for theatre owners from different parts of the country to combine into operating units so as to obtain high-class entertainment to which they hoped to attract capacity audiences. As the size of the theatres was increased, programs were expanded to include additional entertainment, such as "presentations" consisting of symphony orchestras, ballets, and headline vaudeville acts. At the same time, the price of admission was increased to offset the added expense involved.

Entrance of Producers into the Exhibition Division. - The motion picture theatre owners almost from the beginning, formed cooperative buying groups in order to buy picture films for their theatres and to control if possible, prices and playing time. The producers were sometimes required to sell at prices which these groups were willing to pay or else not sell at all. Finally to meet this situation, producers of motion pictures entered into the exhibition field. While the great majority of the theatres are operated by individuals and by independent chains a large proportion of the most important theatres is controlled by the producer-distributors.

Classes of Exhibitors. - The exhibition division of the Industry today is composed of three classes of exhibitors; namely affiliated, unaffiliated, and independent. Affilitated exhibitors include those operating a number of theatres, commonly called circuits, which are owned or controlled by the producer-distributors. Unaffiliated exhibitors include those who operate a circuit of theatres but have no connection with producer-distributors. The remaining exhibitors are called independents. (See Table XXXI, below.)

Total Number of Theatres.

As shown in Table XXVIII, the Film Daily Yearbook reported 16,885 motion picture theatres in the United States in 1934.

Number of Theatres by Principal States

While production of motion pictures is highly concentrated in a few states the market for films, which consists of all exhibiting theatres in the United States, is widely scattered. Table XXVIII indicates the distribution of theatres by principal states in 1934. The state of New York was the most important in 1934, for it reported 9 per cent of the total number of theatres. Pennsylvania and Ohio followed in close order having 6.6 per cent and 5.7 per cent respectively. California, which is the principal producing state, contained about 5 per cent of all theatres.

TABLE XXVIII

Number of Motion Picture Theatres, by Principal States, 1934

State	Number of Theatres	Per Cent of Total
U. S. Total a/	16,885	100.0
California	875	5.2
Illinois	965	5.7
Indiana	573	3.4
Iowa	458	2.7
Kentucky	420	2.5
Massachusetts	499	3.0
Michigan	570	3.4
Minnesota	421	2.5
Missouri	523	3.1
New Jersey	427	2.5
New York	1,539	9.1
Ohio	985	5.8
Pennsylvania	1,121	6.6
Texas	930	5.5
Wisconsin	484	2.9
Total, 15 States	10,790	63.9
Total, Other States	6,095	36.1

Source: Film Daily Yearbook of Motion Pictures, 1934.

a/ This total figure does not agree with the total given by the Motion Picture Producers and Distributors of America which report 18,371 as shown in Table XXXI below.

Number of Theatres Open and Closed

Table XXIX shows the total number of theatres from 1929 through 1935, and from 1932 on; the data are broken down to show the number open and closed. It will be noted that in 1932, 4,627 movie houses out of a total of 20,100, or almost 25 per cent, were closed. However, only 797, or 17 per cent, of those closed were sound-equipped theatres. In 1933, out of a total of 19,311 theatres, 5,895, or about 30 per cent, were closed, of which 2,170, or almost 37 per cent, were equipped with sound. The over-expansion in the number of theatres, their construction in unsuitable locations as real estate promotions, and the attendance by the public at the finer theatres only, resulted in the closing of a large number that had become obsolete or should never have been built.

Although the proportion of closed theatres decreased from 1932 to 1935, the relative number of closed sound-equipped theatres had increased. However, it must be borne in mind that the proportion of sound-equipped movie houses to the total has been increasing since 1929, until in 1935 these houses constituted almost 90 per cent of all theatres.

Seating Capacity

Table XXX shows the total number of seats in motion picture theatres during the years 1931 through 1935. Since 1933, the number has remained relatively constant at slightly more than 11 million.

The potential seating capacity of the Industry may be obtained by combining with the actual number of seats the average number of shows per day. Since some theatres give at least two shows per day, and most of them probably three or four shows per day, the potential daily capacity would be at least two or three times the actual number of seats.

TABLE XXIX

Sound and Silent Motion Picture Theatres

Classified as to whether Open or Closed, 1929-1935 a/

Year	Total			Sound Theatres			Silent Theatres		
	Total	Number Open	Number Closed	Total	Number Open	Number Closed	Total	Number Open	Number Closed
1929	21,000	-- b/	-- b/	1,000	-- b/	-- b/	20,000	-- b/	-- b/
1930	22,000	-- b/	-- b/	9,350	-- b/	-- b/	12,650	-- b/	-- b/
1931	22,100	-- b/	-- b/	13,780	-- b/	-- b/	8,320	-- b/	-- b/
1932	20,100 c/	15,473 d/	4,627 d/	14,805 c/	14,008 d/	797 e/	5,295 c/	1,465 d/	3,830 d/
1933	19,311	13,416	5,895	15,231	13,061	2,170	4,080	335	3,725
1934	18,371	13,736	4,635	15,652	13,673	1,979	2,719	63	2,656
1935	18,263	14,552	3,711	16,325	14,501	1,824	1,938	51	1,887

Sources: Basic data for 1929, 1930, and 1931 from Motion Picture Almanac, 1933, page 6; for 1932 as indicated in footnotes; for 1933, 1934, and 1935 from Film Board of Trade Reports

a/ As of January 1, each year.

b/ Data for number of theatres open and closed not available for 1929, 1930, and 1931.

c/ Standard Statistics Co., Standard Trade and Securities, "Theatres and Motion Pictures", Vol. 75, No. 22 (February 20, 1935) p. TH - 46.

d/ Derived figures.

e/ Motion Picture Producers of America, Inc.

TABLE XXX

Total Number of Seats in Motion Picture Theatres, 1931-1935 a/

Date	Number of Seats b/
1931	12,143,761
1932	10,707,000 c/
1933	11,161,193
1934	11,028,950
1935	11,132,595

Source: Data for 1931, 1932, and 1933 from Motion Picture Almanac, 1933, p. 6; for 1932 as indicated in footnote c/; for 1933, 1934, and 1935 from Film Board of Trade Reports.

a/ As of January 1, each year; includes open and closed theatres.

b/ It will be noted that the total number of seats is not identical with those given by the source cited in Table XXXII, below.

c/ Standard Statistics Company, Standard Trade and Securities, "Theatres and Motion Pictures," Vol. 75, No. 22 (February 20, 1935), p. TH-46.

Number of Theatres and Number of Seats Classified by Type of Ownership

Although, as shown in Table XXXI, affiliated circuits owned on an average about 11 per cent of the total number of theatres during the years 1933-1935, they owned or controlled about 25 per cent of the total number of seats, as shown in Table XXXII. This indicates that this group owned large theatres. The unaffiliated circuits average about 16 per cent of the number of theatres, but they represent approximately 23 per cent of the total seating capacity. Theatres of large seating capacity are also found among the unaffiliated circuits, but independents, who own or control approximately 72 per cent of the total number of theatres, account for a little more than 50 per cent of the total seating capacity.

This is significant because of the competition within the Industry between these three groups. The unaffiliated circuits are usually well entrenched and in a powerful bargaining position in the purchase of films. The independents, who are widely scattered, are usually in a relatively poor bargaining position when their theatres happen to be located in close proximity to the affiliated or unaffiliated circuits. Independents located in non-competitive areas, however, are often in good bargaining positions in the purchase of films.

TABLE XXXI

Number of Motion Picture Theatres, Classified by Type of Ownership, 1933-1935

Year	Total		Circuit Theatres				Independent Theatres	
			Affiliated		Unaffiliated			
	Number	Per Cent of Total	Number	Per Cent of Total	Number	Per Cent of Total	Number	Per Cent of Total
1933	19,251	100.0	2,266	11.8	3,189	16.6	13,796	71.6
1934	18,371	100.0	1,954	10.6	2,846	15.5	13,571	73.9
1935	18,263	100.0	2,073	11.4	3,070	16.8	13,120	71.8

Source: Motion Picture Producers and Distributors of America, Inc., as of January 1, each year.

TABLE XXXII

Number of Motion Picture Theatre Seats, Classified by Type of Ownership, 1933-1935

Year	Total a/		Circuit				Independent	
			Affiliated Theatres		Unaffiliated Theatres			
	Number (000's)	Per Cent of Total	Number (000's)	Per Cent of Total	Number (000's)	Per Cent of Total	Number (000's)	Per Cent of Total
1933	11,086	100.0	2,938	26.5	2,562	23.1	5,586	50.4
1934	11,029	100.0	2,587	23.5	2,493	22.6	5,949	53.9
1935	11,032	100.0	2,719	24.4	2,539	22.8	5,874	52.8

Source: Motion Picture Producers and Distributors of America, Inc., as of January 1, each year.

a/ It will be noted that the total numbers of seats is not identical with those given by the source cited in Table XXX above.

Total Theatre Receipts and Attendance

The total estimated box-office receipts from 1929 through 1934, inclusive, are shown in Table XXXIII. Receipts fell from $1,100,000,000 in 1929 and 1930 to approximately half this amount in 1933. While average estimated admission prices fell from 30 cents in 1929 to 28 cents in 1930, the increased attendance was sufficient to keep the total estimated receipts at the 1929 level, namely, $1,100,000,000. The estimated average admission price fell from 30 cents in 1929 to 20 cents in 1933 and 1934, or a drop of one-third.

TABLE XXXIII

Estimated Total Box-Office Receipts, Average Admission Price, and Attendance, 1929-1934

Year	Total Receipts (In millions)	Average Admission Price	Attendance a/ (In millions)
1929	$1,100	.30	3,660
1930	1,100	.28	3,920
1931	880	.24	3,330
1932	625	.22	2,840
1933	560	.20	2,800
1934	650	.20	3,250

Source: Standard Statistics Company, Standard Trade and Securities, "Theatres and Motion Pictures," Vol. 75, No. 22 (February 20, 1935), p. TH-46.

a/ These figures are not consistent with the average weekly attendance figures given by the Film Daily Year Book, 1935, presumably because the latter source has a more complete coverage than that of the Standard Statistics Company.

Theatre Receipts by Principal States

Receipts by ten principal states are shown below in Chapter II, Table XXXVIII, as reported by the Census of American Business for the year 1933. New York State accounted for 23 per cent of the total receipts reported in 1933, although, as shown in Table XXVIII, above, it contained only about 9 per cent of the total number of theatres in 1934. The ten principal states together accounted for more than 70 per cent of the total receipts in 1933.

Competition with Other Industries

Aside from competition between various types of theatres within the Industry, motion picture theatres compete with radio broadcasting, sports, and other amusements, such as the burlesque industry and the legitimate theatre. Moreover, there exists a type of so-called non-theatrical competition wherein schools, churches, lodges, and sometimes business concerns, display films to the disadvantage of local exhibitors. No figures are available as to the extent of competition from these sources.

Expenditures for Theatre Construction

Table XXXIV shows the rapid decrease in annual theatre construction from $163,559,000 in 1929 to $13,500,000 for the 16 months covering 1933 and the first 4 months of 1934. The figure of $20,000,000 for the 11 months from May, 1934, to April, 1935, indicates the beginning of more activity in theatre construction. The biggest decline came in 1932 when construction dropped 61 per cent.

TABLE XXXIV

Annual Expenditure in Theatre Construction,
1929-March, 1935

Year	Amount (000's)	Per Cent Change from Preceding Period
1929	$163,559	---
1930	97,580	-40.3
1931	45,000	-53.9
1932	17,500	-61.1
1933, - April, 1934 (16 months)	13,500	-22.8
May, 1934 - March, 1935 (11 months)	20,000	↑48.1

Source: Motion Picture Almanac.

Financial Condition

Table XXXV shows the latest available data concerning financial conditions of exhibiting corporations reporting to the Bureau of Internal Revenue for the years 1927 through 1932. The peak of earnings for all corporations wa reached in 1930, when net profits amounted to almost $30,000,000. However, the year 1931 saw a decrease of about 87 per cent in profits from the 1930 peak. In the year 1932 motion picture theatres operated at a loss of more than $59,000,000

TABLE XXXV

Gross Income, Net Profit or Loss,
1927-1932
(In thousands)

Year	Gross Income	Net Profit or Loss
1927	$345,771	$18,951
1928	407,842	21,646
1929	508,439	22,394
1930	513,105	29,743
1931	484,652	4,423
1932	505,490	-59,336

Source: Bureau of Internal Revenue, Statistics of Income.

PART IV: EXHIBITION

Chapter II. Labor Statistics

Number of Employees

Census data for the years prior to 1933 are not available on employment and wages in the exhibition branch of the Industry. Table XXXVI, taken from the Census of American Business, 1933, shows the total number of employees and the average number employed per motion picture theatre. The figure of 6.9 for the average number employed per theatre is lower than that reported by the Bureau of Labor Statistics in a study made of eleven neighborhood theatres in Washington, D. C., in the latter part of 1931, when an average of 10.7 employees per theatre was reported (See Table XL, below). However, according to figures given in trade publications such as the Film Daily, Variety, and Motion Picture Almanac, theatres have been reported to average about 16 employees. It is considered that the average for the entire country approaches the latter figure as reported by the trade publications, especially since the higher figure is further supported by the fact that employees such as musicians, vaudeville talent, and office employees were omitted from the Washington survey.

TABLE XXXVI

Annual Average Number Employed, Full and Part-Time, by Types of Theatres, 1933 a/

Type of Theatre	Total		Full-Time		Part-Time		Average Employees per Theatre
	Number	Per Cent of Total	Number	Per Cent of Total	Number	Per Cent of Total	
Motion Picture only	65,728	100.0	54,030	82.2	11,698	17.8	6.9
Motion Picture and Vaudeville	8,635	100.0	7,924	91.8	711	8.2	13.4
Total Theatres showing Motion Pictures	74,363	100.0	61,954	83.3	12,409	16.7	7.3

Source: Census of American Business, 1933, "Service, Amusements, and Hotels."

a/ Includes proprietors.

Total Annual Payrolls

Table XXXVII shows total payrolls for moving picture theatres in 1933. For all types of motion picture houses, full-time payrolls amounted to 94 per cent of the total.

TABLE XXXVII

Total Payrolls, Full and Part-time, by Types of Theatres, 1933

Type of Theatre	Total		Full-Time		Part-Time	
	Amount (000's)	Per Cent of Total	Amount (000's)	Per Cent of Total	Amount (000's)	Per Cent of Total
Motion Picture only	$71,451	100.0	$67,009	93.8	$4,442	6.2
Motion Picture and Vaudeville	10,305	100.0	10,053	97.5	252	2.5
Total Theatres Showing Motion Pictures	81,756	100.0	77,062	94.2	4,694	5.8

Source: Census of American Business, 1933, "Service, Amusements, and Hotels."

Total Annual Payrolls as a Per Cent of Total Receipts

According to estimates of the Motion Picture Almanac for 1933, payrolls in the exhibition division represent about 25 per cent of total theatre receipts. This figure is slightly higher than that derived from receipts and payroll data reported by the Census of American Business in 1933, which listed receipts as $415,153,000 (see Table XXXVIII, below), and a total, full and part-time payroll of $81,756,000, which represents approximately 20 per cent of total receipts. (See Table XXXVII, above.)

Number of Wage Earners and Total Annual Wages by Principal States

Table XXXVIII shows the distribution of full-time employees and payrolls by ten principal states, as reported by the Census of American Business in 1933. The ten states listed employed almost 67 per cent of all the full-time employees in that year and paid them 73 per cent of the total payroll. The state of New York employed 18 per cent of all full-time workers, but reported 26 per cent of the total full-time payroll, which indicates high average wages in that state. California was second with more than 8 per cent of total employees, who received 8 per cent of the total payroll. New York also received the largest share of theatre receipts, amounting to 23 per cent of the total.

TABLE XXXVIII

Total Receipts, Number of Full-Time Employees and Payrolls, Classified by 10 Principal States, 1933 a/

State	Total Receipts		Full-Time Employees		Full-Time Payroll	
	Amount (000's)	Per Cent of Total	Number (000's)	Per Cent of Total	Amount (000's)	Per Cent of Total
U. S. Total	$415,153	100.0	63,136	100.0	$80,519	100.0
California	35,223	8.5	5,220	8.3	6,284	8.3
Illinois	23,106	8.0	4,303	6.8	6,695	8.9
Massachusetts	22,809	5.5	3,678	5.8	5,141	6.8
Michigan	14,124	3.4	2,324	3.7	2,925	3.9
Missouri	10,256	2.5	1,601	2.5	2,370	3.1
New Jersey	19,179	4.6	12,116	3.4	3,647	4.8
New York	93,907	22.6	11,463	18.2	19,778	26.1
Ohio	20,730	5.0	3,822	6.1	4,223	5.6
Pennsylvania	30,891	7.4	4,889	7.7	5,588	7.4
Texas	12,825	3.1	2,548	4.0	2,200	2.9
Total, 10 States	293,050	70.6	41,969	66.5	58,851	73.1
Total, Other States	122,103	29.4	21,167	33.5	21,668	26.9

Source: Census of American Business, 1933, "Services, Amusements, and Theatres."

a/ The data include 122 legitimate theatres and operas which grossed $8,611,000 and employed 1,182 full-time workers with a payroll of $3,457,000. When allowance is made for the inclusion of these legitimate theatres and operas, the employee and payroll data in this table are identical with those given in Tables XXXVI and XXXVII, above.

Wages and Hours

In Principal Cities. - Reports on wages and hours of unionized projectionists in 1933 were published by the Bureau of Labor Statistics in the Monthly Labor Review for May, 1933. The report, which embraces almost 230 cities and 5,494 operators, shows that average weekly wages ranged from $22.50 to $95.00. Prevailing hours ranged from 23 to 62 hours per week.

An analysis of the report discloses the distribution of weekly union wage scales and hours worked per week shown in Table XXXIX. These ranges vary primarily with the strength of the union in particular localities rather than with the size and type of theatre, size of city, or section of the country. It is believed that wages and hours of work of other organized workers (stage hands and musicians) in the motion picture theatres would show a similar variation, depending upon the strength of the union.

TABLE XXXIX

Wage Scales and Hours Worked per Week by Unionized Projectionists, Classified by Number of Cities, 1933

Item	Number of Cities
Wage Scale	
Under $35 per week	25
Between $35 and $45	75
Between $45 and $65	111
Over $65	29
Hours Worked per Week	
Under 36	45
Between 36 and 40	43
Between 40 and 45	35
Between 45 and 50	44
Over 50	25

Source: Compiled from Bureau of Labor Statistics Monthly Labor Review, (May, 1933) p.1111.

In Washington, D. C. - Table XL shows the hourly wage rate and hours worked per week by the various classes of wage earners employed in eleven neighborhood theatres in Washington, D. C. in the latter part of 1931. 1/ The average weekly hours for all types of full-time employees ranged from 32.5 to 49 hours per week; for all types of part-time workers, from 8 to 24 hours. In the service branch, weekly wages for full-time employees ranged from $9.28 to $18.40; for part-time employees, from $6.65 to $8.55. Technicians such as operators, electricians and engineers were the highest paid help and averaged about 45 hours per week.

1/ The Bureau of Labor Statistics reports that the city of Washington was chosen for this survey "because of the belief that this city has been affected less than any other city of its size by the business depression, and it would therefore be possible to segregate the effects brought about by the changes in technology from those due to other causes, and especially to the depression."

TABLE XL

Average Weekly Hours and Wages of Employees in 11 Neighborhood Motion Picture Theatres of Washington, D. C. by Branch of Work and Occupation, 1931

Branch of work and Occupation	Number of Theaters	Number Employed	Average Hours per Week	Average Wages per Week	Average Wages per Hour
Service					
Cashiers	11	11	38.6	$14.61	$0.378
Relief Cashiers	3	3	12.3	6.65	.540
Doormen	11	13	33.6	10.11	.300
Full-time Ushers	11	31	32.5	9.28	.285
Part-time Ushers	1	3	24.0	8.55	.356
Matrons	2	2	39.0	13.53	.346
Porters	11	18	54.6	18.40	.336
Cleaners	2	3	37.3	12.66	.339
Elevator boys	1	1	44.0	14.25	.323
Projection					
Operators	11	24	40.0	67.10	1.677
Relief operators	2	2	8.0	17.00	2.125
Music Organists	1	1	42.0	75.00	1.785
Stage					
Electricians	1	2	48.0	70.00	1.458
Relief electricians	1	1	16.0	20.00	1.250
Maintenance					
Engineers	1	1	49.0	33.25	.678
Watchmen	1	1	56.0	19.00	.339
Total Number Employed		117			
Average per theater		10-7/11			

Source: Bureau of Labor Statistics Monthly Labor Review, (November, 1931) p. 5.

Table XLI shows the average weekly wage of full-time projectionists and "service" employees in the various types of theatres in Washington, D. C. Cashiers in downtown de luxe picture houses, labelled Type 1, averaged $21.85 while in "other colored" theatres, Type 7, they averaged only $10.00 per week. Projectionist operators in Type 1 theatres averaged $96.67, while in Type 7 they received $31.00.

TABLE XLI

Average Weekly Wages in Different Types of Motion Picture Theatres of Washington, D.C., by Branch of Work and Occupation, 1931

Branch of Work and Occupation	Theatre Types a/						
	1	2	3	4	5	6	7
Service							
Cashiers	$21.85	$19.08	$14.57	$14.61	$10.70	$14.33	$10.00
Doormen	22.33	21.15	20.00	10.11	11.15	16.08	11.22
Ushers	17.18	15.81	---	9.28	8.85	11.23	---
Porters	19.57	19.32	11.70	18.40	13.63	18.35	18.12
Matrons	10.46	11.70	---	13.53	9.00	---	---
Projection							
Operators	96.67	83.55	50.00	67.10	41.47	47.33	31.01

Source: Compiled from Bureau of Labor Statistics, Monthly Labor Review (November, 1931), pp. 4-6.

a/ Theatre types are defined as follows:

Type 1 - Down-town de-luxe presentation houses.
" 2 - Down-town first-class straight-picture houses.
" 3 - Other down straight-picture houses.
" 4 - First-class neighborhood straigt-picture houses.
" 5 - Other neighborhood straight-picture houses.
" 6 - Colored first-class picture houses.
" 7 - Other colored picture houses.

PART IV: EXHIBITION

Chapter III. Materials

Number of Films Used

De luxe theatres usually exhibit no more than 50 feature pictures during the year, while the better neighborhood theatres generally exhibit from 100 to 150 features. Both these types of theatre show each year approximately twice as many short subjects as features. These short subjects consist of comedies, cartoons, and travelogues, etc., but do not include news films.

In other neighborhood theatres, where features are changed three times a week, approximately 150 are required annually. In recent years there has developed the practice of showing two features during a program, and this has greatly increased the number of films used per year.

Per Cent of Consumer's Motion Picture Dollar Spent on Film Rental

No accurate data are available as to the total expenditures of exhibitors for film rentals. According to Table XLII, the cost of producing films accounts for a little more than 18 per cent of the consumer's moving picture dollar, and distribution costs amount to almost 8 per cent. This makes a total of 26 per cent which may be taken as a rough indication of the proportion of the consumer's dollar spent on film rental.

TABLE XLII

Per Cent of the Consumer's Motion Picture Dollar Accounted for by the Chief Divisions of the Industry, 1933

Division	Per Cent of Total
Production	
Players	4.5
Directors and Cameramen	2.4
Sets	1.8
Costumes	.5
Location	.5
Raw Film	1.4
Stories and Scripts	2.9
Administration	4.2
Total Production	18.2
Distribution	
Branch Expenses	3.6
Print Cost	1.6
Home Office Expense	2.6
Total Distribution	7.8
Exhibition	
Payroll	24.7
Advertising	8.2
Depreciation and Maintenance	5.1
Rent, Real Estate, and Taxes	15.4
Other Taxes and Insurance	2.1
Electricity and Heat	5.1
Other Expenses	8.3
Interest and Profit	5.1
Total Exhibition	74.0
Total for Industry	100.0

Source: Motion Picture Almanac, 1933.

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PART IV. EXHIBITION

Chapter IV. Unfair Trade Practices

Clearance and Zoning

Equitable clearance and zoning has been, and still remains, a most controversial problem within the Industry. Feature films, which open in large cities for as much as $5,000 per week, may eventually return to those same cities for $25.00. First-run exhibitors, paying large license fees and charging high admission prices, have complained that insufficient time elapses between the first-run of a feature picture at a large theatre and subsequent runs in smaller theatres. Claims have been made that the payment of large fees entitles them to the protection of showing pictures without the fear that smaller theatres may present the same film so soon after the first showing, that prospective patrons would be inclined to wait for the lower admission prices on subsequent runs elsewhere.

On the other hand, subsequent-run exhibitors have claimed that the major exhibitors receive unreasonable clearance of time between first and subsequent showings, and also that the large exhibitors have enacted rights over unreasonably large areas.

Other Unfair Trade Practices

Most exhibitor contracts with distributors contain provisions that the exhibitor will charge specified admission prices and the cost of the license to show the picture is based on these prices. Exhibitors, although publishing these prices, have often materially lowered them by offering gifts or premiums; by holding lotteries, or by instituting a policy of throw-away tickets or two-for-one admissions. Once started, these practices spread throughout an entire competitive area and exhibitors have vied with each other in making more extravagant offers.

The practice of showing two feature films for one admission price was an extremely controversial subject during pre-Code discussion. Social, religious, and educational organizations protested that this policy of having a double-feature program absorbed screen time which would otherwise be given over to the showing of travelogues and other educational short subjects. Some independent exhibitors claimed that the elimination of this policy would deprive them of their only means of competing with the larger moving picture theatres. This practice, which spread rapidly in any territory where it was initiated, was soon adopted by the larger as well as the smaller theatres.

Exhibitors as a group have considered unfair the leasing of films to non-theatrical accounts, i. e., to social, religious, and educational organizations which exhibit motion pictures such as travelogues, religious pictures, comedies, and educational short subjects.

Exhibitors have claimed that discrimination has been used in the application of "score" charges. These charges are a hangover from the early days when "scored music" was sold in conjunction with pictures. When sound recording was introduced the "score" charge was continued, being included in the cost of the disc or sound track.

Trade Associations

The Motion Picture Theatre Owners of America (M P T O A). - This association was organized in 1920 by independent theatre owners to combat the theatre expansion policy pursued by Famous Players Lasky Corporation.

The organization is composed of several state and regional groups operating as independent associations. The national organization attempts to coordinate activities and provide uniform action on problems of major importance to exhibitors. It may roughly be stated to represent at least 2,500 of the affiliated theatres.

In 1927, because of the expressed belief that more constructive accomplishments could be secured by constructive cooperation rather than open hostility, producer-distributor theatre owners were granted membership. The organization immediately became financially dependent upon these new members and control passed from the hands of the independents to the new group.

Allied States Association of Motion Picture Exhibitors. - This Association was originally formed in 1923 as a protest against some of the practices of the Motion Picture Theatre Owners of America. It was fashioned after the M P T O A. and in many instances regional groups simply transferred their allegiance from one organization to the other. In 1926, following a promise by the M P T O A. to serve the interests of the independent exhibitors primarily, Allied States voted to disband and affiliate with the former. Two years later certain prominent independent exhibitor members of the original Allied group decided to reorganize.

In 1932 Professor Lewis Howard reported that Allied States represented 6,000 theatres. It is generally conceded by the Industry that the larger circuits are represented by the M P T O A, and the smaller theatres by Allied States.

Trade Union Activity

International Alliance of Theatrical Stage Employees and Motion Picture Machine Operators of the United States and Canada. - This union was composed of approximately 26,000 members in 1934, according to a statement made in that year by its Assistant President, Louis Krouse. It is affiliated with the American Federation of Labor and its members are the skilled employees in the Industry. The organization is composed of a number of local unions throughout the United States and Canada.

APPENDIX

Exhibit A. Persons Qualified as Experts on the Entire Industry

Will H. Hays, President, Motion Picture Producers & Distributors of America, Inc., 28 West 44th Street, New York, New York

David Palfreyman, Theatre Service Division, Motion Picture Producers & Distributors of America, Inc., 28 West 44th Street, New York New York

Sol A. Rosenblatt, former Division Administrator, NRA, International Building, Radio City, New York

John C. Flinn, former Secretary of the Code Authority, now connected with Variety, Inc., 154 West 46th Street, New York, New York

Tyree Dillard, former Counsel for the Code Authority, now connected with Metro-Goldwyn-Mayer, Legal Department, New York, New York

Nathan Yamins, represented Independent Exhibitors on Code Authority, Fall River, Massachusetts

Ed Kuykendall, President, Motion Picture Theatre Owners of America; also represented Independent Exhibitors on former Code Authority, 1600 Broadway, New York, New York, and/or Columbus, Mississippi

Abram F. Myers, Chairman of Board and General Counsel for Allied States Association of Motion Picture Exhibitors, 729 15th Street, N.W., Washington, D. C.

John P. Knight, Maintenance Executive, Paramount Theatres Service Corporation, Times Square, New York, New York

Pat Casey, Producers' Representative for Studio Labor, 1600 Broadway, New York, New York, and/or 5504 Hollywood Blvd., Hollywood, California

George Browne, President, International Alliance of Theatrical Stage Employees and Motion Picture Machine Operators of the United States and Canada, Earle Theatre Building, Washington, D. C.

Louis Krouse, Assistant President, International Alliance of Theatrical Stage Employees and Motion Picture Machine Operators of the United States and Canada,
Earle Theatre Building, Washington, D. C.

Steven Newman, International Representative, International Alliance of Theatrical Stage Employees and Motion Picture Machine Operators of the United States and Canada,
3671 Valley Brink Road, Los Angeles, California

Joseph Weber, President, American Federation of Musicians,
1450 Broadway, New York, New York

Frank Gilmore, President, Actors Equity Association and Chorus Equity Association,
45 West 47th Street, New York, New York

Professor M. P. McNair, Disinterested authority on the Industry,
Harvard Bureau of Business Research,
Cambridge, Massachusetts

Professor Howard T. Lewis, Disinterested authority and historian on the Industry,
Harvard Graduate School of Business,
Cambridge, Massachusetts

Terry Ramsaye, Editor, Motion Picture Herald; Writer, historian and authority whose works have been regarded by subsequent historians as original.

Exhibit B. The Advent of Sound in Motion Pictures

Sound in Exhibition

The advent of sound in 1926 caused a revolution in the Industry comparable with the introduction of the feature picture in 1913. The development suddenly changed the entire business and revived a failing interest in motion picture entertainment. The tremendous influence of good music later brought to sound-equipped theatres a large increase in patronage. At first only shorts were synchronized with sound reproduced from discs. Companies moved cautiously to make the transition to sound as gradual as possible, presumably because of the large technical changes involved.

Warner Brothers' Vitaphone ushered in the present commercially successful innovation in August, 1926. Fox closed a contract with Western Electric for the development of Movietone in January, 1927, which led to a cross-licensing arrangement with Vitaphone. A simple attachment to the projectors was developed by which Vitaphone and Movietone equipment could be used interchangably. Subsequent cooperation of General Electric, R. C. A. and Western Electric with major producers brought quick progress. Cost of equipment for reproduction was constantly decreased, due to the Industry's knowledge that small-theatre installations were necessary to the success of sound pictures. Fox "caught" the Lindbergh takeoff for the solo flight to Paris for the Movietone News. The "covering" of the Lindbergh reception in Washington with sound newsreel made history. However, the distribution of the newsreel was restricted, due to the limited number of wired houses.

Marketing of the Western Electric equipment by Electrical Research Products began in August, 1927, offering the systems which embraced sound-on-film, sound-on-disc, and non-synchronous disc systems. Installation costs ranged from $8,000 to $15,000 in price, depending upon the theatre and its accoustical requirements.

Meanwhile, Warner Brothers had secretly prepared an all-dialogue picture entitled "The Lights of New York." Experiments up to this time had included mostly sound effects and music with only scatterings of dialogue. Vitaphone and Movietone News, as short "all talkers," had been tremendously successful. While successfully received throughout the country, "The Lights of New York" clearly demonstrated that the most rigid care had to be exercised in the selection of words given the characters to speak. Voices which would synchronize were necessary. Stars began to worry about lessons in elocution.

Wired theatres prospered while unwired houses were not even given proper exploitation advantages. Exhibitors were fretful concerning the oft-arising question of interchangeability on which the patent holders refused clearly to commit themselves although well-informed sources had conceded it to be no problem, provided reproduction standards and quality were satisfactory.

The year 1929 found sound pictures off to an auspicious start, due to the announcement of lower prices by Western Electric for either the Vitaphone or Movietone reproduction equipment for June 1st delivery at a price of $5,500 each, or $7,000 for both. At the end of 1929, wired theatres numbered 9,350. Will H. Hays estimated that theatre attendance increased 15,000,000 weekly during the year.

Sound in Production

The introduction of sound in production caused a change in style of making pictures, the erection of more than 100 sound stages, and the installation of millions of dollars in equipment. Old talent was eliminated in numerous instances and new talent introduced. An addition of approximately 5,000 employees was reported at the end of 1930. It has been estimated that 99 per cent of all pictures produced in 1930 were either sound or all-talking pictures.

The cost of making a picture with sound was estimated to be from five to seven times the cost of making an all-silent picture. The increased overhead, loss of box-office names of players who had starred in silent pictures, employment of additional writers, loss of time through experimentation, and the use of more film were the major contributing factors.

At the end of 1930, 60 per cent of the exhibitors were using the sound-track method of projection and the remainder were using the disc method. Until late 1930, Warner Brothers and First National were producing all pictures on discs, but in that year they began to use the sound-track method. The disc method has the disadvantage that the discs are cumbersome and hard to handle, and the method is also more expensive.

According to the Motion Picture Daily of July 29, 1935, 18 patent licenses for a new sound system have been issued. The invention is known as "the dynamic multiplier system," by which the undesirable characteristics of present sound apparatus are eliminated. More life-like quality is effected, which may again revolutionize the Industry.